



INTRODUCTION TO ALTERNATIVE DISPUTE RESOLUTION AND ODR, DOMAIN NAMES WITHIN THE .CZ DOMAIN AND .EU DOMAIN

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DOMAIN NAME DISPUTES

MAIN PRINCIPLE

- **First comes – first served**
- **The domain name is immediately registered**
- **What if the holder of domain name is not the one who should own it?**
- **Cybersquatting, typosquatting, etc.**

THE STRUCTURE

Top level domain names (TLDs)

- Generic .com, .gov, .org, .biz, .edu
- National .cz, .uk, .de, .sk, .ru
- Specific .eu

Subdomains

- muni.cz, seznam.cz, google.com

Lower Subdomains

- law.muni.cz, mail.google.com

NEW GTLDS

New top level domain names (TLDs) from 2013

- <https://newgtlds.icann.org/en/>
- **List of all generic domain names (more than 1532):**
- <http://data.iana.org/TLD/tlds-alpha-by-domain.txt>

SQAUTTERS ALLOWED?



**HOW
TO
SQUAT**

SQUATTERS ALLOWED? NO!



**HOW
TO
SQUAT**

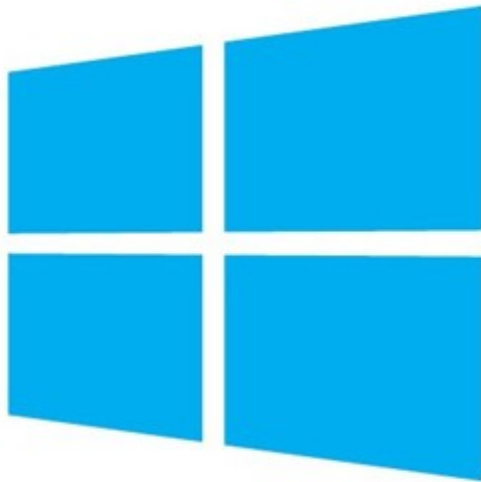
HOW TO BE LEGALLY PROTECTED FROM CYBERSQUATTERS?

- **Competition law?**
- **Trademark law?**
- **Geographical indications?**
- **Commercial name (firm)?**
- **Right for privacy (e.g. EUHR)?**

- **COURT?**
- **ANOTHER MORE SUITABLE SOLUTION?**

- **WHAT WOULD YOU DO?**

EXAMPLE



- **Someone would register the domain microsoft.cz**
- **He does not use this domain and offers it for sale for €200 000**
- **Can the trademark owner claim violation of his rights?**
- **Can the trademark owner claim transfer of the domain name?**
- **What if the owner is based in US, administrator is Czech and squatter Russian?**



#WWYD

Solution

~~Problem~~



ALTERNATIVE DISPUTE RESOLUTION



WHAT IS ADR?

ADR

- **Out-of-court dispute settlement**
- **Classical tool in history to settle commercial dispute**
- **Evolved into another fields**
- **Less formal than court proceedings**
- **Faster in specific cases**
- **Based on the agreement of the parties**

ADR

- **Does not fit for „internet disputes“**
- **Judicial proceedings are not convinient as well**

- **EVOLUTION?**



ADR IS OLD



!! ODR SHOULD BE THE FUTURE !!

REASONS?

- **Increased volumes of squatting cases**
- **Problems with international element**
- **Insufficient national regulation**
- **Low experience of judges with cybersquatting and IP law in general -> experts are deciding the case**

REASONS!

- **Dispute settlement clause in the terms and conditions of registrations**
- **Third parties have the right (not duty) to file a complaint at a selected institution**
- **These clauses are contained in the majority of domain names**
- **Usually it is not arbitration clause, but non-binding ADR clause!!!**

THE RULES - TLDS

- **Uniform Domain-Name Dispute Resolution Policy (UDRP)**
- **Top-level domain names**
- **<https://www.icann.org/resources/pages/help/dndr/udrp-en>**
- **List of providers:**
- **<https://www.icann.org/resources/pages/providers-6d-2012-02-25-en>**

THE RULES - CCTLDS

- National authorities (does not have to be governmental)
- Contract with ICANN
- In Czech Republic – CZ.NIC
- <https://www.nic.cz/page/314/pravidla-a-postupy/>

THE RULES - .EU



- **Not an arbitration clause!
(again)**
- **Competence of arbitration
courts enacted by
regulation 874/2004/EC**
- **<https://eurid.eu/en/>**

THE RULES - .EU



- **Set of eu regulations:**
- **http://ec.europa.eu/ipg/basics/urls/doteu_en.htm**

- <http://www.adr.eu/>



ODR IN GENERAL
NOT ONLY DOMAIN NAMES BUT ALL
KINDS OF DISPUTES

The notion that most people want black-robed judges, well-dressed lawyers, and fine paneled courtrooms as the setting to resolve their dispute is not correct. People with problems, like people with pains, want relief, and they want it as quickly and inexpensively as possible.

Warren E. Burger

Former judge at US Supreme Court

BACKGROUND

Traditional judicial mechanisms... did not offer an adequate solution for cross – border electronic commerce disputes, and that the solution (providing a quick resolution and enforcement of disputes across borders) might reside in a global ODR system for small value, high volume ... disputes

Courts are resolving only a fraction of today's legal disputes (especially low - value) – **PROBLEM!!**

WHAT IS ODR?

- **It is difficult to provide a self - contained definition of ODR**
- **Dispute resolution, which uses electronic communication to exchange every information between the parties**
- **A growing number of cases (especially low – cost cases) are being resolved by online tools and sometimes lawyers and judges are not even involved**

WHAT IS ODR?

Definitions:

- ***dispute settlement which may or may not involve a binding decision being made by a third party, implying the use of online technologies to facilitate the resolution of disputes between the parties***
- ***dispute resolution carried out by combining the information processing powers of computers with the networked communication facilities of the Internet***

WHAT IS ODR?

- **ODR is NOT only modified ADR (alternative dispute resolution)**
- **The technology is the fourth party helping to settle the dispute**
- **Triad:**
 - **1) online communication**
 - **2) dispute settlement**
 - **3) software assistance**

HISTORY OF ODR

The first ODR forms started to evolve between 1996 and 1997 (software assistance)

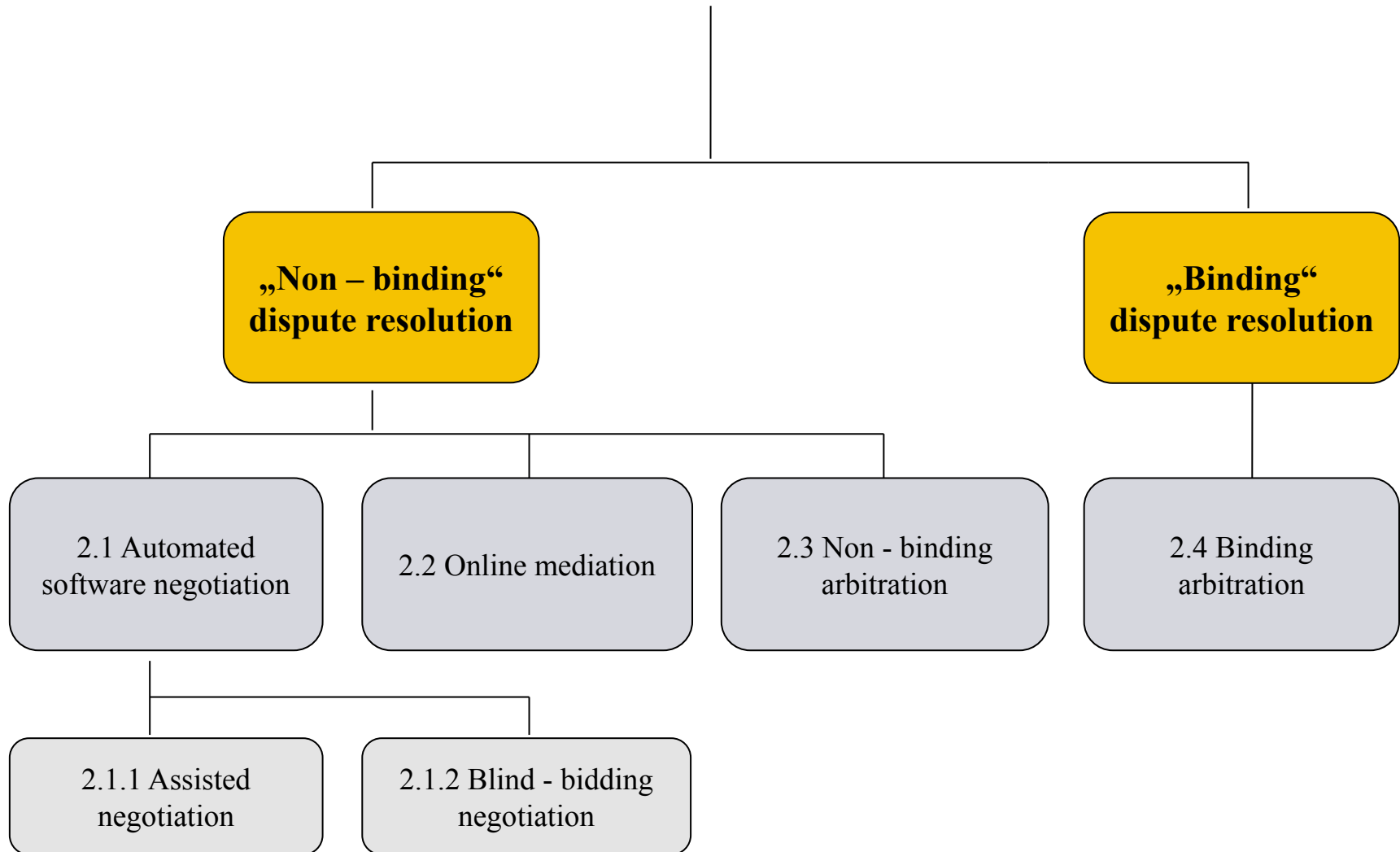
The first experiments were created at the University of Massachusetts in the USA and Canada

Those projects were later transformed for commercial use

One of the first official systems providing ODR was *The Virtual Magistrate*

- it never fulfilled expectations of the founders
- it was mainly caused by *“limited scope of disputes, a lack of advertising and the fact that the project was voluntary so that the case managers had no way to force the defendant to take part in the proceedings or to enforce the decisions.”*

ODR METHODS



2.1 AUTOMATED SOFTWARE NEGOTIATION

Negotiating software is used to reach the agreement between parties without using any third party (negotiator, mediator)

Negotiation can't discuss the liability, only the final sum of the damages

- 2.1.1 Assisted negotiation
- 2.1.2 Blind - bidding negotiation

2.1.1 ASSISTED NEGOTIATION

The ODR system helps parties through software to create the most efficient solution for both parties (win – win solution)

It tries to calculate the best outcome proposing parties possible solutions

The parties should be able to achieve an agreement, if they agree with the solution

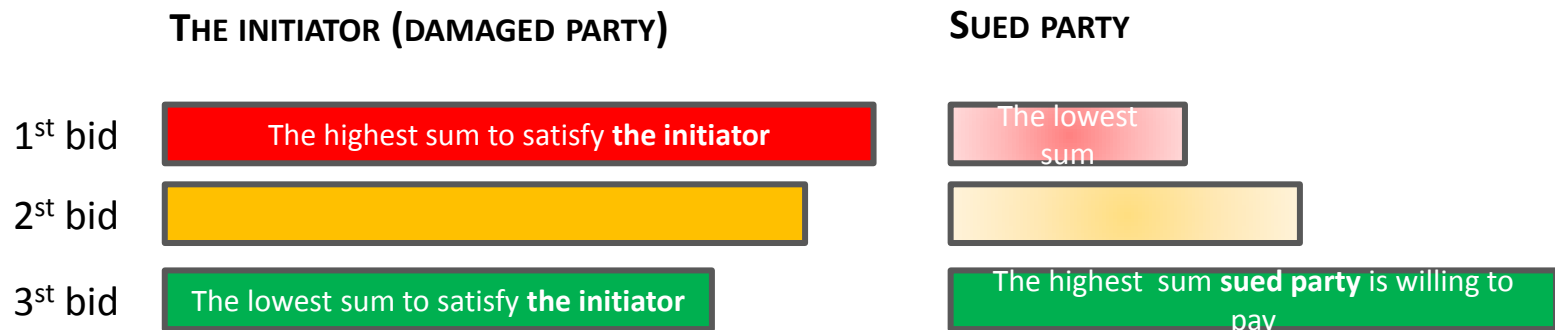
2.1.2 BLIND - BIDDING NEGOTIATION

The ODR system allows both parties to put bids without seeing the sum offered by other party

➔ When these bids reach certain level (amount of money), which approaches to each other, than software automatically reveals those offers and proposes the settlement

BLIND - BIDDING

- The parties are willing to enter negotiation and to reach the settlement, which is binding between the parties once, they agree so
- The process is developed for single issue, monetary claims



2.2 ONLINE MEDIATION

It can be seen as classical mediation using modern technologies and online tools

As non – binding solution, it uses cyberspace to communicate between the parties and mediator(s) through email, videoconference, special webpage or particular software

Great advantage is seen in dynamic form reacting to the direction of dispute by varying the mediation process

2.3 NON – BINDING ARBITRATION

This ODR method is lying on the borders between binding and non-binding ODR

Enforcement is secured by private organization using less formalized rules

Non – binding arbitration is based on the idea of self - regulating the community with no connection to national legislation and enforcement mechanisms

Domain name dispute settlement!

2.3 NON – BINDING ARBITRATION



Private organization is the only one, who controls the resources valuable to both buyers and sellers traded under certain community

Example: ICANN (*Internet Corporation for Assigned Names and Numbers*) and its UDRP process (*Uniform Domain - Name Dispute - Resolution Policy*)

2.4 BINDING ARBITRATION

Arbitration is a process where a neutral third party (arbitrator) creates a decision which is final and binding

It is quasi - judicial procedure - the award replaces a court decision

Arbitration is often used to resolve business disputes because it is usually faster than litigation

Arbitral awards are usually easier to be enforced abroad comparing to the court decisions

2.4 BINDING ARBITRATION



The result of online arbitration should be binding and enforceable?

Every requirement of national and international legal framework has to be followed and respected to reach the full possibility to enforce online award

ADVANTAGES AND DISADVANTAGES OF ODR

PROS	CONS
1. Speed and work with information	1. Obstructions of the process
2. The fourth party	2. Technological limitations
3. Legality	3. Due process
4. Erasing distances	4. Insufficiency of non – verbal communication
5. Asynchronous communication	5. Inequality of the parties
6. Adaptability of the system	6. Security of cyberspace and privacy
7. Liberation from emotions and F2F contact	7. Boundaries caused by lack of F2F communication
8. Quick intercession	
9. Saving the costs	
10. Use of translation software	

UNCITRAL WORKING GROUP III.



The core legal body of the United Nations system in the field of international trade law

A legal body with universal membership specializing in commercial law reform worldwide for over 40 years

UNCITRAL's business is the modernization and harmonization of rules on international business

UNCITRAL WORKING GROUP III.



Model law for online dispute resolution relating to cross-border electronic commerce transactions, including business - to - business (B2B) and business - to - consumer (B2C) transactions

Rules of different ODR providers should be harmonized

http://www.uncitral.org/uncitral/commission/working_groups/3Online_Dispute_Resolution.html

UNCITRAL WORKING GROUP III.



- **Scope of application:**
 - low-value
 - cross-border
 - e-commerce
- **Language will be the one employed in the contract**
- **Multi-step process**
 1. Negotiation
 2. Facilitation
 3. Arbitration
- **Enforcement of outcomes through online arbitration process**



DRAFT PROCEDURAL RULES

Preamble

Draft article 1 - Scope of application

Draft article 2 - Definitions

Draft article 3 - Communications

Draft article 4A - Notice

Draft article 4B - Response

Draft article 4C - Counterclaim

Draft article 5 - Negotiation

Draft article 6 - Facilitated settlement

Draft article 7 - Recommendation by a neutral

Draft article 8 - Settlement

Draft article 9 - Appointment of neutral

Draft article 10 - Resignation or replacement of neutral

Draft article 11 - Power of the neutral

Draft article 12 - ODR provider

Draft article 13 - Language of proceedings

Draft article 14 - Representation

Draft article 15 - Exclusion of liability

Draft article 16 - Costs

EU INITIATIVE



Statistical background:

- **1 in 5 consumers in the EU encountered problems when buying goods or services – loss estimated at 0.4% of the EU's GDP**
- **More than 750 ADR entities in the EU**
 - **Diverse not only in different EU states but also within countries**
 - **50% of the existing ADR entities are notified to the European Commission by national authorities as meeting the quality criteria set out in the Commission Recommendations**
- **The level of access to dispute resolution is differentiated**
 - **No recognized ADR entities (e.g. Slovakia, Slovenia)**
 - **Very limited access to ADR entities (e.g. Cyprus, Romania)**

EU INITIATIVE



Directive on alternative dispute resolution for consumer disputes (ADR)

- **The directive should ensure that consumers can turn to quality alternative dispute resolution entities for all kinds of contractual disputes**
- **It doesn't matter, what they purchased (excluding disputes regarding health and higher education) and whether they purchased it online or offline, domestically or across borders**
- **It does not apply to traders' complaints against consumers (such as claims for payment) or to trader-to-trader complaints**

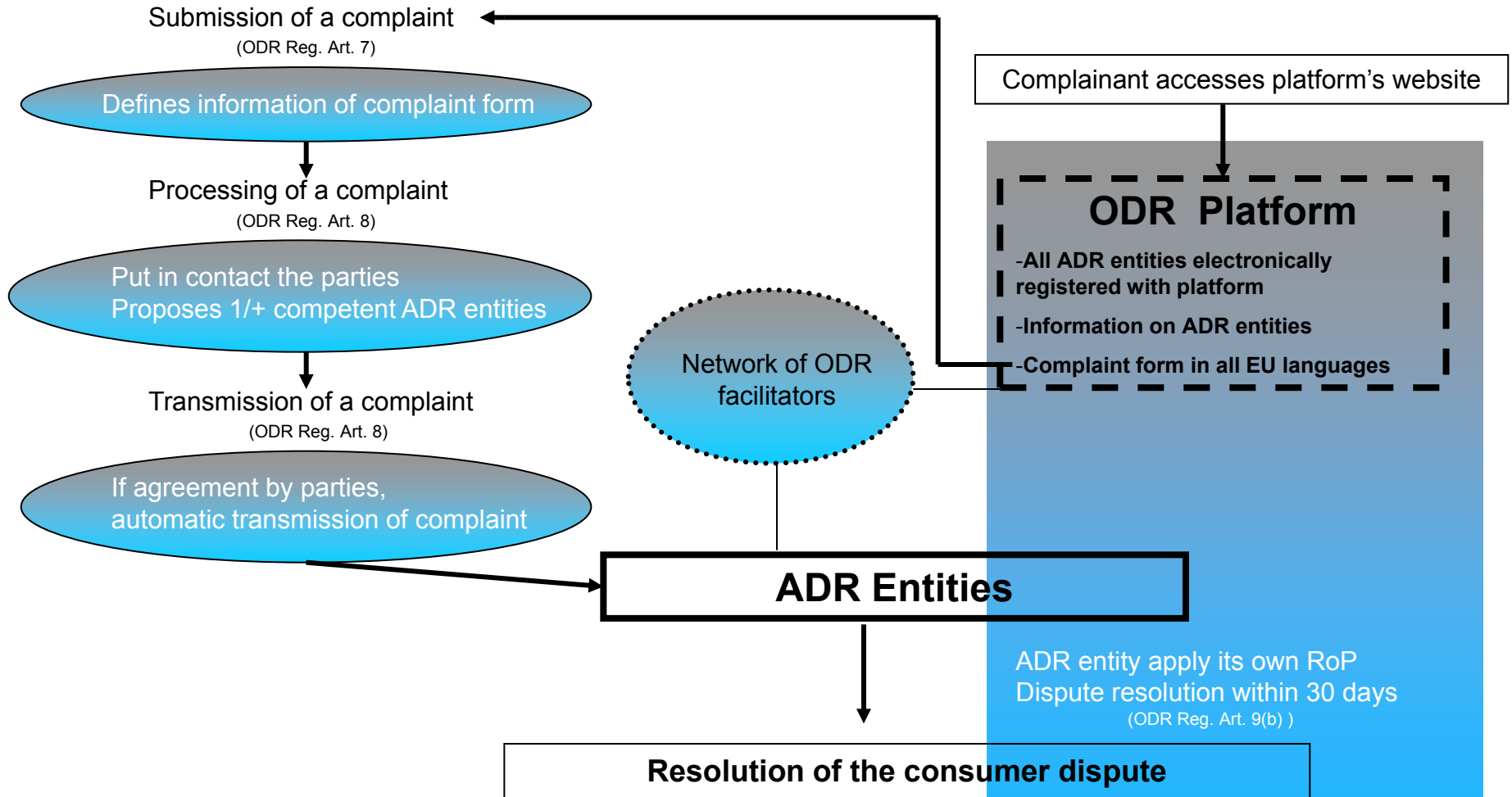
EU INITIATIVE



Regulation on online dispute resolution for consumer disputes (ODR)

- **The regulation is setting up EU-wide online platform**
- **For the disputes that arise from online transactions**
- **The platform will link all the national alternative dispute resolution entities and will operate in all official EU languages**
- **Establishment of a free, interactive website through which parties can initiate ODR in relation to disputes concerning online transactions (offline transactions are excluded)**
- **National ADR entities will receive the complaint electronically and seek to resolve the dispute through ADR, using the ODR platform exclusively if they wish**

EU REGULATION SCHEME



EU INITIATIVE



Problems? **There are some..**

- 1) Missing presence of online negotiation under ODR platform
- 2) Misleading reference to the use of ODR platform
- 3) Language issues
- 4) Forum shopping

EU INITIATIVE



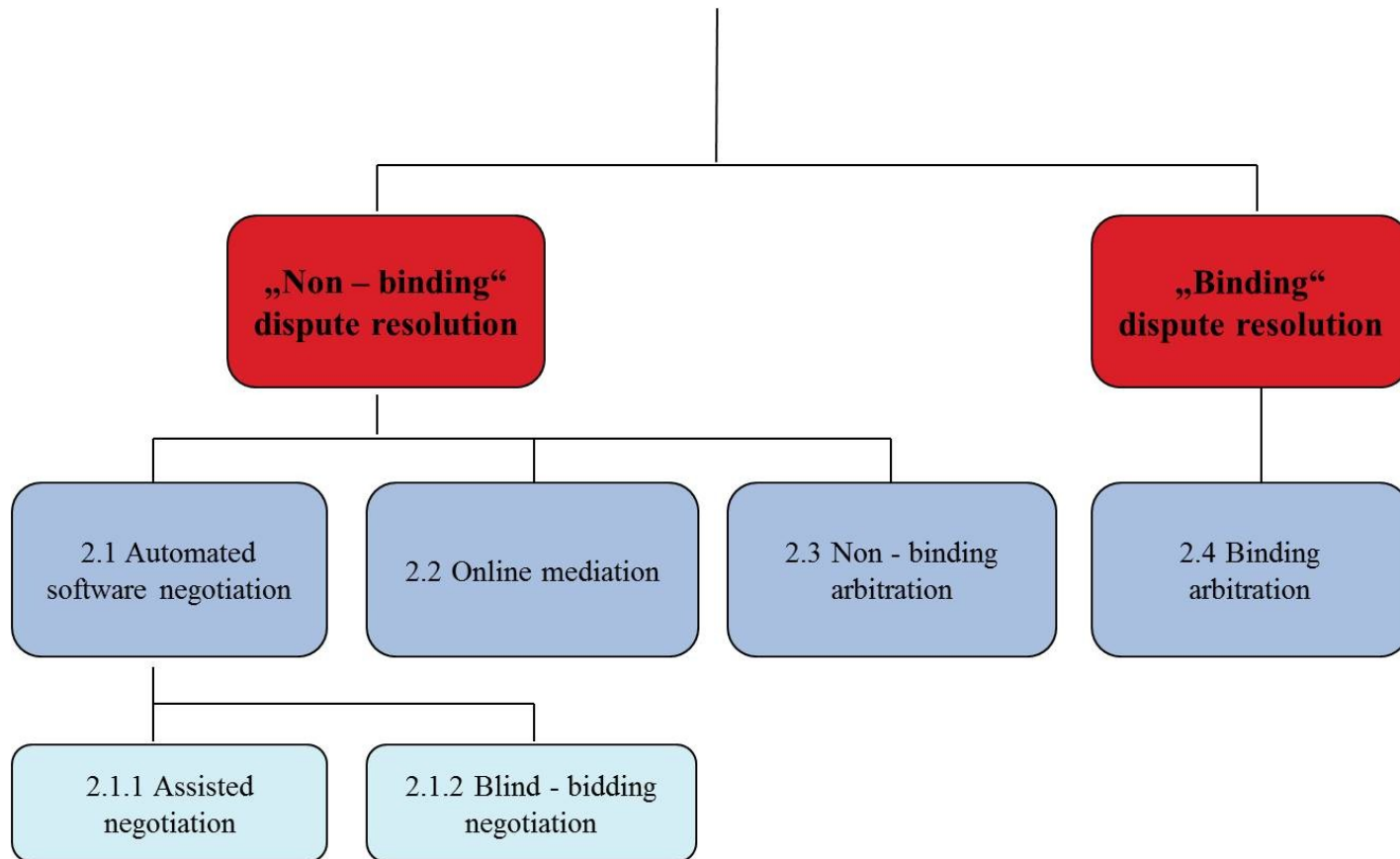
More problems?

- 5) Unsatisfactory legal basis of ADR and ODR regime in EU
- 6) General issues relating to the functionality of the ODR platform
- 7) The absence of evaluation and incentive for the parties to settle dispute
- 8) Non-existing interconnection of the ODR with the
- small claims procedure

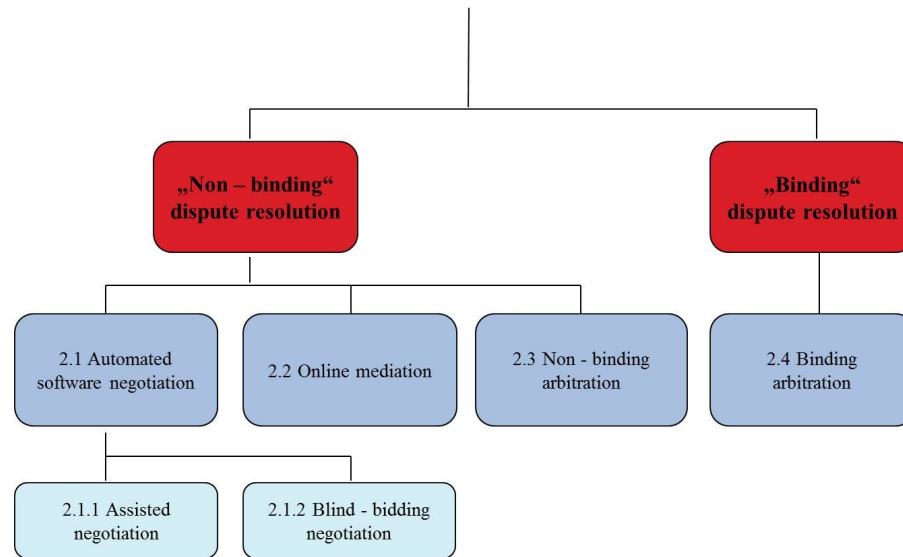
Attempt to offer quick and easy solution to the consumers (did it fail?)

(YES?)

BINDING / NON – BINDING ODR



BINDING / NON – BINDING ODR



The possibility to „enforce“ the outcome of ODR is one of the key factors

Binding ODR

- Enforcement by public authorities

Non – binding ODR

- Acceptance of the decision by participating parties and enforcement solely by private mechanisms

ODR highly increases access to justice in low - cost (or repetitive) cases

BINDING ODR

New York Convention is the most important tool to recognize and enforce binding arbitral award

It is the key to enforce online binding decisions adjudicated in contractual states

Legality of online arbitration

- **Online arbitration agreement**
- **Online arbitration proceedings**
- **Online arbitration award**
- **Online arbitration enforcement**
- **Appeal and revision**

BINDING ODR

Problems:

- **Outdated mechanisms for enforcement of online awards**
- **Traditionalism of some legislations with recognition and enforcement of online arbitral award (e.g. identification of the arbiters, localization of the arbitration, agreeing by parties on the arbitral agreement)**
- **National rules of protecting the consumer**
- **Slowness of using New York Convention mechanisms**
- **Trust by the users into the online tools and binding enforcement mechanisms**

NON – BINDING ODR

Enforcement is secured by private organization using less formalized rules especially in small – value B2C, C2C transactions

Non – binding arbitration is based on the idea of self - regulating the community with no connection to national legislation and enforcement mechanisms

Private organization is the only one, who controls the resources valuable to both buyers and sellers traded under certain community

Only very few online buyers and sellers are willing to go to court to enforce their decisions under national and international rules (especially in low – value cases)

NON – BINDING ODR

Problems?

The rules are created *ad hoc* and ODR systems are fragmented, which can lead into decreasing users' confidentiality in solving their disputes using non – binding methods

It is impossible to decide the damages of the dispute

Non – binding ODR enforcement mechanisms are fully workable when the transactions are repeating

Convincing online businesses to finance ODR systems, thus to use ODR mechanisms

BINDING OR NON – BINDING ENFORCEMENT OF ODR: THE OUTCOME?

Binding ODR

- **International framework with NYC and national rules are the most convenient tool to be used in nonrecurring (*single - shot*) higher value especially in B2B transactions**

Non - binding ODR

- **Contract binding, does not establish *res iudicata***
- **The significant usability mainly in repeated (*multiple – shot*) B2C, C2C low – value, high - volume cases**
- **1) reputation**
- **2) escrow/chargeback**

ICANN & UDRP (SOMETHING IN BETWEEN)



- In the beginning, when the party registers the domain name, it agrees to undergo an online dispute settlement if someone files a complaint about his registered domain name in the future
- ICANN as the organization securing top – level domain names is the only one responsible for enforcing the rules in this area using UDRP (Uniform Domain-Name Dispute-Resolution Policy)
- **THE ENFORCEMENT**
 - If the complainant loses, the holder of the domain name remains the owner
 - If the complainant wins, the domain name is transferred by ICANN to the complainant
 - The court proceeding are possible, but rarely used. The court however follows previous decision made by UDRP arbitration process.



**KEEP
CALM
AND
STAY
SOBER**

STAY SOBER (ODR WON'T SAVE THE WORLD)

- **Modern technologies help with access to justice, but it can't be overrated**
- **The dispute can still be decided also without using modern technologies**
- **Full utilization of online communication, online file management, etc. isn't absolute condition to decide the case**
- **However all those tools significantly speed up the process and help the parties to solve their case**

FUTURE?

Lex informatica – development, existence?

Necessary investment

Possible application not only in e – commerce, but also in other smaller disputes:

- **Telecommunications, energetics, etc.**

ODR tools can be applied in court proceedings

FUTURE OF ODR - EJJUSTICE

- Multi-step process:
 - **1) negotiation**
 - **2) mediation**
 - **3) binding decision-making process**
- The courts would manage whole process, transfer available information to the next stages, and ultimately process the court's decision when linking non-binding decision-making to the judicial system
 - the courts would be shielding whole process and offer whole technological environment and tools)

BACK TO UDRP

What is it?

What it serves for?

Why is it binding (or is it)?

UDRP VS NATIONAL SOLUTION OR .EU?

Did you understand how it works?

What is the relationship?

Please discuss..



THANK YOU FOR YOUR ATTENTION!

QUESTIONS?