REDRESS FOR FREE INTERNET SERVICES UNDER THE SCOPE OF THE EU AND UNCITRAL'S ODR REGULATIONS

COMPENSACIONES PARA LOS SERVICIOS DE INTERNET GRATUITOS EN EL MARCO DEL ALCANCE DE LAS REGULACIONES SOBRE ODR DE LA UE Y LA CNUDMI

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Abstract

It has been widely acclaimed that ODR could be appropriate for handling conflicts, especially originated in e-commerce transactions. However, suitability of ODR tools has to be examined also from the perspectives of development and constant adoption of new services in the market. In this paper, we focus on the existing and proposed international legal frameworks for ODR and we examine the suitability of these frameworks to provide foundation for redress in disputes over "free" online services. This paper examines EU ODR Regulation that has yet to be applied and current proposal for global ODR framework by UNCITRAL's Working group III and compares them from point of view of growing business model. We approach these two existing and proposed regulatory solutions for ODR and examine their shortcomings, while at the same time we point to the need of redress over growing number of free services.

Keywords
Free Services. Freemium. Online Dispute Resolution. Cloud Computing Services. UNCITRAL. EU ODR Regulation.

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Resumen

Ha sido ampliamente sostenido que la resolución de disputas en línea (RDL, ODR) podría ser un mecanismo apropiado para la gestión de conflictos, en especial los originados en transacciones de comercio electrónico. Sin embargo, la idoneidad de las herramientas de ODR también tiene que ser examinada desde la perspectiva del desarrollo y la adopción constante de nuevos servicios en el mercado. En este trabajo, nos centramos en el marco jurídico internacional existente y propuesta para ODR y examinamos la idoneidad de estos marcos para establecer el fundamento de la compensación en las disputas en los servicios "libres" en abierto. Este estudio analiza una de las regulaciones existentes sobre ODR, el Reglamento de ODR de la UE, que aún no se ha aplicado, y la propuesta actual de marco global ODR propuesta por el Grupo de Trabajo III de la CNUDMI (UNCITRAL). Este artículo aborda las soluciones normativas existentes y propuestas para ODR y examina sus deficiencias señalando al mismo tiempo las necesidades de reparación para el creciente número de servicios gratuitos.

Palabras clave
Servicios gratuitos. Freemium. Resolución de disputas en línea. Servicios de computación en la nube. lCNUDMI (UNCITRAL). Regulación sobre ODR de la UE.

1 Introduction

Internet is constantly evolving. It is evolving thanks to innovative and collaborative efforts of the people, seeking new ways to interact. At the same time the law is lagging behind. Seemingly borderless and speedy internet interaction appears to be misaligned with sometimes conservative nature of the law. The very process of regulating often proves slower than dynamic changes in new social or digital reality. Sometimes the law is outdated even before it enters into force.

Online dispute resolution (ODR) has appeared as one of the solutions for certain inadequacies of national laws and their application to e-commerce disputes. Even though it is not the only field where it is useful, it has been widely acclaimed that ODR mechanisms could be appropriate for handling conflicts originated in e-commerce transactions. These mechanisms especially seemed appropriate for low-value high-volume buyer-seller disputes.

Ethan Katsh believes that the advent of Web 2.0, where users are content creators, will inevitably lead to exponential increase in disputes online (KATSH, 2012). According to Katsh and Colin Rule, business of tomorrow will look at ODR as a way to mitigate these disputes and facilitate trust with users (RULE; NAGARAJAN, 2011).

In this paper, we focus on the existing and proposed international legal framework for ODR and we examine the suitability of these frameworks to provide redress for disputes over "free" services online. But first we need to clarify what we mean by free services.

2 "Free" services

Even though free services have existed long time in various forms in the commerce their usage were never on the level of the current use of free services on the Internet. Almost every person today uses some form of free online service. This observation alone justifies further examination in the nature and the potential for disputes over these services. In his book *Free: the Future of a Radical Price*, Chris Anderson preaches the coming of the dawn of free services (ANDERSON, 2009).

For the purpose of this paper we will consider service that has not been paid directly by the user as a "free service". However, we do not intend to claim these services have no economic value. In fact, there are very often paid by a third party, subsidized in some other way or paid by the user indirectly or through some other form of exchange (i.e. for personal data). These alternative ways of monetizing services are also the answer to how business models based on free services exist, survive and thrive.

2.1. Expansion

Since our focus here is on Internet services, we are mostly interested in discussing the origins of digital-online service expansion. Like in most tech industries, the source of fast growth and expansion could be explained by the economic effects of Moore's law, Kryder's law and several other laws describing decrease in price through time per unit of production (or increase in rate of production per time units). Moore's law (MOORE, 1965) is an observation that, over the history of computing hardware, the number of transistors on integrated circuits doubles approximately every 18 months. Therefore, the prices of the circuits (or the price of processors) constantly decrease. Kryder's law (WALTER, 2005), similarly, explains decrease in prices per storage unit, hence more and more memory is available to us for the same price, either buying bigger hard drives or getting bigger storage space online or in the "cloud". Butter's law (ROBINSON, 2000) illustrates that the amount of data coming out of an optical fiber is doubling every nine months. Nielsen's law (NIELSEN, 1998) claims that the bandwidth available to users increases by 50% annually. Similar laws describe other building blocks of Internet and digital economy.

The consequences of this rate of production is that we have a highly competitive market of services, with low barriers to entry that constantly puts pressure to lower the cost of services or to offer more and more of free services.

2.2 Business models

Constant lowering of prices, as described above, allowed the development of business models around free services or free offers. Chris Anderson claims that this is natural consequence of speed and growth of production in digital economy, where resources are abundant (as opposed to the physical world) and where speed of distribution is instant and costs of distribution are minimal to nothing (ANDERSON, 2009).

Hoofnagle and Whittington (HOOFNAGLE; WHITTINGTON, 2014), however claim that "free" is mostly used as an enticement to get consumers to try a product without realizing its costs. They argue that conceiving the transactions as free can be detrimental to consumers and to competition, because there are often hidden charges in these exchanges in form of providing personal information. According to them:

> The service provider may expect to earn revenues from the personal information collected about consumers who devote their attention to advertising and other services, such as games, from third parties. The more time the consumer spends using the service and revealing information, the more the service can adjust the product to reveal more information about the consumer and tailor its advertising of products to that consumer's personal information. (HOOFNAGLE; WHITTINGTON, 2014, p. 608-609).

Hoofnagle and Whittington (2014) are also proposing consideration of free services from transaction cost economics' point of view, which hardly leaves them the qualification "free".

De la Iglesia and Gayo (IGLESIA; GAYO, 2009, p. 89) divide these business models in the following categories: advertising, freemium, work exchange and mass collaboration. They explain that advertising model is based on the building of an audience, or better to say in internet terms, a community, to which advertisers will want to offer their products or services; in Freemium model (combination of words free and premium) premium users pay and subsidize the use of everybody; work exchange allows free services in exchange of some work by users; mass collaboration exists because the cost are nearly nothing.

Table 1 - Table of Web 2.0 business models.

Model	Cost	Who pays	Why
Freemium	0	Premium users	Better features
Advertising	0	Advertisers	Attention of community to its products or services.

Work exchange	0	Service provider or sponsor	Getting value from users
Mass Collaboration	0	Donators Volunteers	Altruism Self-promotion Interest

Source: Iglesia and Gayo (2009, p. 95).

Some of the most prominent free web services consider personal information gathering essential for revenues. The value of personal information is also confirmed by market valuations of such companies and their proprietary networks. At the same time, researchers are trying to answer what is the value of personal data per individual user. The methods vary from measuring value of privacy (HUBERMAN; ADAR; FINE, 2005) to willingness to pay if personal data could be bought from social network (SPIEKERMANN; BAUER; KORUNOVSKA, 2012). Spiekermann study suggests that the more a user is using a social network, the more he/she is willing to pay for personal information (SPIEKERMANN; BAUER; KORUNOVSKA, 2012, p. 4).

3 Potential for disputes regarding free services and role of ODR

Psychological effects of the perception of the free have been recently researched. Some studies found the additional benefit (revenue) that goes with the label "free" (ARIELY; SHAMPANIER, 2006; SHAMPANIER; MAZAR; ARIELY, 2007). At the same time legal academics have also discussed the potential for deception by the offers presented as free (FRIEDMAN, 2008). For the purposes of this paper we will not go further into these discussions, but we will focus more specifically on Internet services where we can claim that the mere volume of interaction online is a good indicator of a possibility for an increase in number of disputes (KATSH; RIFKIN, 2001; KATSH, 2002). Free internet services are usually global (or internationally available), easily accessible and hosted from servers whose location are unknown to most of the users.

Together with the effects of Moore's law and similar laws of economy, free services expansion coincides with the expansion of cloud computing. Poles on usage of cloud computing services display constant increase in adoption of this technologies and steady growth of industries providing this kind of services (CLOUD INDUSTRY FORUM, 2013). It is also evident that free "apps[2]" are widely available on "app markets" for various smartphones and their platforms. Many of them, to work properly, demand internet connection (usually to display ads). In certain cases, we have interesting interaction between free and premium (sometimes paying) users in the new free web-based games. For

[2] Short of applications.

example, players of free game *FarmVille* can earn virtual currency by completing tasks or selling crops, but also users can use real money to gain these currencies (Farm Coins and Farm Cash in *FarmVille* or Farm Bucks in *FarmVille 2*). However, is the legal treatment of users who earned virtual currency same as treatment of users who purchased virtual currency by real money?

Having in mind previously mentioned research on value of personal data[3] and relationship between invested time/effort in using a service and value it represents for user, we could also easily imagine situations where users get in conflict over free web service. Consider a user finding one day that he/she cannot access to his/her (one of the popular) free email account[4]. How much time and effort invested in that service would be lost together with all established communication and contacts, because of alleged violation of terms of service? Would one pay to have this situation resolved? If so, how much? Would one be willing to file a lawsuit in the court (usually Californian) specified within standardized terms of service? What would be the cost of such action? Or consider already numerous examples of Facebook locking the account after reports of violation of Facebook Community Standards[5], especially over some controversial topics. Certain artist create and promote provocative artwork that could be deemed inappropriate by Facebook administrators. How about a dispute over wrongly assessed test or assignment on one of the free Massive Open Online Courses (MOOCs), provided by educational platforms like Coursera[6], which offer free education globally and where users are obtaining valuable certificates without paying for the course or enrollment? We could imagine young man, from small village in India, trying to get competitive advantage on labor market by obtain MOOC degree or certificate. But would he really be able to have access to justice when all disputes are to be resolved before federal or state court in Santa Clara, California? This is where ODR's potential is most obvious.

However, while the online dispute resolution has proven to be useful in different areas of commerce and life (WAHAB; KATSH; RAINEY, 2012), it has not been as fast at accepting latest advancements in technologies as a tool (POBLET, 2011), or yet developed appropriately for the new "realities" in e-commerce (RULE; NAGARAJAN, 2011; POBLET; CASANOVAS, 2010). These new conditions in the markets, partly relate to the offers of free or cheap online services and inadequacy of most of ODR tools to provide appropriate, quick and cheap dispute resolution. Whether it would be a dispute about faulty virtual good in online game, borrowing of some virtual good or access (LODDER, 2006, p. 143), negative review that someone has posted or block of an account for no apparent

[3] See previous page.
[4] Similar story described by Ho (2013).
[5] https://www.facebook.com/communitystandards.
[6] https://www.coursera.org/.

reason, the need for appropriate dispute resolution exists in certain cases. While Colin Rule, expects ODR to be a great beneficiary of Web 2.0 technologies, he also admits that too many ODR providers rely on outdated platforms and technology because they are reluctant to make the investments in time and resources needed to bring their platforms up to web 2.0 standards (RULE, 2006).

We are proposing here to distinguish two forms of disputes: dispute between users of free service and dispute between user and provider of a free service. Previous research in field, mostly discuss potential conflicts among users of free services, like negative reviews, privacy claims, IPR claims etc. However, under certain circumstances ODR could be very effective tool and response for the lack of consumer protection, vis-à-vis certain cloud services, free or not (MARTIC, 2014).

Even courts are puzzled about the free services. How does consumer protection apply and how to deal with them? In United States courts are prone to discount users' claims against such services. In the recent *Facebook* privacy case[7] a federal court decided, that for alleged transfer of personal information to advertisers that violated a variety of privacy and consumer protection statutes, users of Facebook were not "consumers" under California law (HOOFNAGLE; WHITTINGTON, 2014, p. 658) and thus not entitled to consumer protection. The court, distinguishing the facts of this case from *Doe 1 v. AOL, LLC*[8]*,* argued that consumers who paid for certain services may state claim under California consumer protection. Looking from legal theory point of view, this raises interesting question: are users of free service deprived of certain legal rights simply because they are not paying for service?

This interpretation would have effect on consumers globally, if various national consumer protection laws did not deem unfair some of the clauses of applicable law and jurisdiction that could be usually found in click-through agreements when users sign-up for some free web services. In Europe, the French court of Cassation ruled differently in *Mr. Sebastian R v Facebook* case, claiming that since users are important source of funding (advertising and freemium model[9]) and their use of service has economic value, they should be under (certain) consumer legal protection (CUNNINGHAM, 2013, p. 8). It is also obvious that market treats collected personal information as property and assets during the company valuations (HOOFNAGLE; WHITTINGTON, 2014).

Having in mind previously mentioned examples of cases and these indicators of different EU-US approach to consumer protection for free service, we will now discuss EU ODR

[7] See: http://www.leagle.com/decision/In%20FDCO%2020110516720.
[8] See*:* https://www.courtlistener.com/cand/e1Pn/doe-1-v-aol-llc/.
[9] As described in page 4.

regulation and UNCITRAL's proposal for global ODR framework giving legal grounds to dispute resolution on a global scale. Both initiatives should have big effect on ODR, as they represent official support and trust of international community, as well as a new boost to the global development of ODR.

4 EU ODR Regulation's consumer protection for free services?

EU parliament has recently voted in favor of the proposal on the ADR Directive and ODR Regulation on consumer disputes (EUROPEAN COMMISSION, 2011). According to the ODR regulation, the EU ODR platform will be functional by the end of 2015 and it will serve as a portal for filing disputes and finding appropriate ADR to solve them. It will also capitalize on harmonizing effect of ADR directive, which fills the gaps in ADR practices in the Member states and provides minimum standards for ADR, such as impartiality and professionalism of neutrals etc.

EU ODR platform is intended to be single pan-EU starting point for consumer complaints with important role of facilitating dispute resolution by offering applicable and suitable ODR providers for incoming disputes. However, the success of whole endeavor will largely depend on acceptance of businesses to be part to ODR processes.

Looking at the text of the adopted EU ODR and ADR regulations we get an impression that the legislator had primarily focused on buyer-seller disputes of products for Internal market. Nominally, legislator addresses services, but our impression is that author of regulations is mainly having in mind types of disputes for services that are extension of offline services and practices. We do not get the impression that legislator had in mind free services and services connected to it for the reasons expressed bellow.

Firstly, the idea that EU has not been fully considering free online services is best illustrated in the definition of the service. If we look at the definition of service contract for ADR directive (ODR regulation refers to it for the definition) it clearly says:

> service contract means any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof […] (EUROPEAN UNION, 2013b).

Any click-through sign-up for free service is a form of service contract. This definition excludes use of EU ODR platform for disputes over contracts for free services, where economic gains are not coming from consumers paying for the service, but from other possible income models as described in the previous pages. We could also question the possible interpretation of this definition on free trial periods of the services; free trial is not

as committing to payment or undertaking to pay for a service. In the highly competitive markets for certain internet services it is highly expectable that there is a free trial period.

Similarly, to keep the customer loyalty, service providers are often providing other free services that may not be directly connected to one that has been paid. Such subsidized service is usually based on separate click-through contract, which according to ADR Directive is not a service contract.

We have to mention that EU ODR regulation primarily is intended to be a consumer protection tool and that it applies only to disputes between consumers and traders who are residents of the European Union. Free web services, are also most commonly cloud computing services, where its biggest providers are residents of United States. It is common that Software as-a-service (SaaS[10]) model is based on PaaS[11] or IaaS[12] of a different provider (possibly based outside EU). The functioning of SaaS is sometimes dependent on SLAs[13] of its provider. Meaning that disruption of services of IaaS (like Amazon Web Services) would lead to disruption of a European SaaS. Consumers of free SaaS being in contractual relationship with only European provider could seek redress for this disruption. This would put free SaaS provider in an awkward situation to be part of the dispute resolution process where it in fact is not responsible for the lack of the service. So unless there is an adequate remuneration from its own provider, SaaS would not easily accept to be part of the process where the majority of its users could seek redress.

It is possible that the EU's ODR platform will be appropriate for EU based cloud providers which are competing with more developed US providers of web services, by way of offering more redress tools and building trust with users this way. On the other hand, we could also argue that many US cloud companies who are providing cross borders services, are also being intentionally "shielded" behind disclaimers and limitation of liability offered by the domestic law in order to prevent or make harder access to redress to certain group of users (MARTIC, 2014). If interested, web service companies based outside of EU would probably consider ODR regime based on UNCITRAL's proposal which we will discuss in the following pages.

Finally, even if we have a free service provider, who accepts to be part in ODR process that some users initiated against him, there is an issue of consistency since there is no obligation of business that advertises its acceptance and support for EU ODR platform by placing link to it (EUROPEAN UNION, 2013a) that it will actually follow it through and

[10] Software as-a-service, form of cloud computing services.
[11] Platform as-a-service.
[12] Infrastructure as-a-service.
[13] Service Level Agreement.

respond to invite by ODR platform. In other words, the web service could advertise its willingness to resolve disputes through ODR mechanisms, but when it really comes to it the business will make case-by-case decision to be or not to be the part of the ODR process. This is a general problem of EU ODR regulation - lack of proper mechanism to ensure the acceptance of the processes. In highly competitive markets where different services providers offer similar free services, those who are actually willing to participate to ODR procedure would maybe have to go a step further and offer such option for consumers in terms of service, leaving them sometimes exposed to multitude of frivolous claims if they do not specify in details under which circumstances and for what type of disputes they are willing to participate.

5 UNICTRAL's work in progress

At its forty-third session in New York, in 2010, United Nations Commission on International Trade Law (UNICTRAL) agreed that a Working Group should be established to undertake work in the field of online dispute resolution (ODR) relating to cross-border electronic commerce transactions, establishing Working group III to deal with this matter. In following forty-fourth session the Commission reaffirmed the mandate of the Working Group in respect of low-value high-volume cross-border electronic transactions (UNCITRAL, 2011).

UNCITRAL's WG III has recently held its 29th session[14], discussing the idea of establishing internationally accepted and trusted normative framework for ODR. The latest development has led to dual track approach, where countries could opt between two regimes. One regime accepts binding predispute arbitration agreements for consumers and ultimately end ODR processes in binding arbitrations and other regime does not accept binding predispute clauses for consumers and ends processes in neutral's recommendation. We will not discuss here the eventual outcomes of the UNCITRALs work as it is still far from concrete results. UNCITRAL's WG III does not distinguish Business-to-Business (B2B) and Business-to-Consumer (B2C) disputes, but proposes single (double tracked) process for both B2B and B2C disputes. Many of the issues are still lingering, and it is difficult to assess what will be the final outcome.

However we will focus on UNCITRAL's WG III approach to the definition of low value. For the latest session the phrasing of paragraph (1) has also been slightly proposed to reflect the fact that draft generic procedural rules for ODR (the Rules) are intended for use in the context of disputes arising out of "cross-border, low-value transactions" (as opposed

[14] See: http://www.uncitral.org/uncitral/commission/working_groups/3Online_Dispute_Resolution.html

to previous versions of "high-volume low-value", "high volume" has been removed). In the several latest sessions, diverging views were expressed in relation to whether that term "low-value" ought to be defined in the preamble. It was also pointed that providing a definition would increase clarity as to when the Rules applied, and was said to be particularly relevant in that context from a consumer-protection standpoint (UNCITRAL, 2013).

Some representatives claimed in previous sessions that any abuse of the use of the Rules would be limited if its scope was indeed limited to low-value transactions. This was indicative as participants of the Working group consider the proposal for framework mainly from the point of view of low-value transaction. But what is the transaction in committing and using a free service? Do they consider the lowest value (in terms of price) that has become a standard for many electronic services?

If we consider transaction costs economics (TCE), maybe we could discuss about transactions for free services. The term transaction refers to the completion of a trade and to the transfer of legal control and TCE theory recognizes that costs are generated in the formation of contracts, are ongoing with the execution of contracts, and are set apart from—or exist in addition to—the cost of production (HOOFNAGLE; WHITTINGTON, 2014). This theory could be particularly useful in cases of divergence between price and cost, which is the case when the price of a good or a service appears to be zero (WHITTINGTON; HOOFNAGLE, 2012). However, having in mind the nature of the discussion[15] of the Working group it is unlikely that participants considered free services from the cost point of view.

On the other hand, it was said that creating a definition would be exceedingly difficult, especially because the definition of "low-value" could change over time and across borders, therefore they decided not to include the definition in the Rules, but to set it out in follow through Guidelines. However, in the scope of application it is specified:

> These Rules shall only apply to claims:
> (a) that goods sold or leased [or services rendered] were not delivered, not timely delivered, not properly charged or debited, and/or not provided in accordance with the agreement made at the time of the transaction; or
> (b) that full payment was not received for goods [or services] provided. (UNCITRAL, 2013).

[15] Some phrases like "in conformity with the agreement" were changed to "in accordance to agreement" to be more modeled to the standards and language set in United Nations Convention on Contracts for the International Sale of Goods (CISG) although the CISG does not apply to consumer contracts. It maybe illustrates the mindset which is set on sales of goods (UNCITRAL, 2013).

The scope of application narrows the types of possible disputes in e-commerce. Looking from the aspect of free services, paragraph (a) excludes the possibility of disputes for service not properly charged or debited, services not provided in accordance with the agreement made at the time of the transaction (since the transaction did not occur) and paragraph (b) excludes disputes when full payment was not received for service. The second type could be possible if we interpret transaction from the point of view of transaction costs economics, which probably is not the intention of authors of the proposal.

The third type, which is intended for sellers or providers of service, is particularly narrowing if we consider B2B free services disputes, or in cases of B2C disputes in cases where is possible to have disputes against users. Some internet services (for example cloud services, SaaS) providers define Acceptable Use Policies (AUP), which are in-house rules that users have to follow (i.e. forbidding activities leading to breach of intellectual property rights etc.). In case of the breach the provider takes actions (like suspending account, deleting files etc.). We could imagine the use of ODR as well in these cases where the breach of AUP has led to some consequences to service provider or if provider seeks to legitimize its decisions through ODR procedure. Free services are included only for the disputes of non-delivery and late delivery, which do not look as plausible cause for many cases.

The applicability to some types of disputes is excluded as the scope of application is oriented on disputes around payments. We would argue that "low value" is actually considered only "low price paid". But in the age of Web 2.0 and growth of free services, is this conception of low value suitable for today's e-services? What can we expect of the ODR, if it is modeled only to the picture of the e-commerce from the beginning of 21st century? Shouldn't we also consider some new and upcoming forms of rendering services as e-commerce marches into Web 3.0? Can ODR reach its potential as response to a need for solving disputes in "digital reality", if legal framework is limited to only traditional e-commerce disputes?

6 Private vs. public approach to ODR

Both EU's Regulation and UNCITRAL's proposal face criticism for lack or inappropriate enforcement, lack of incentives for traders in general and questionable effects of certain provisions. Many questions remain from our point of view as well. How should we deal with freemium model? Do consumers of free services deserve consumer protection, and if they do how to provide it for global internet services. How do we factor spent time/effort, loss of the control, risk of data protection/privacy in these B2C or even B2B contracts?

Private ODR initiatives have proven to be very effective tool for resolving disputes, when certain conditions are met (DEL DUCA; RULE; LOEBL, 2012). The ways EBay and PayPal handle dispute (RULE, 2002; WAHAB; KATSH; RAINEY, 2012) are examples of private ODR initiative within service provider or a community. Both, EBay and PayPal, have high success rate in handling disputes between their users. As we mentioned before, we could distinguish the type of disputes between services and users from the disputes between users. Here, we have an unequal negotiation power from very start. The issue of impartiality of private ODR providers when handling such reoccurring disputes of a big service provider could always intrigue and raise suspicion. For handling these kinds of disputes public initiatives could be perceived more legitimate and impartial.

At this moment, private initiatives and companies are leading the innovation in ODR market, pushing it in direction of more automatic handling of disputes, even higher volumes and faster resolution (RULE; SINGH, 2012). MODRIA[16] is offering innovative and flexible approach for handling disputes according to the needs of its users (their approach starts with diagnostics of the dispute followed with appropriate dispute resolution mechanism). They offer resolution for the disputes over certain free services e.g. some negative review disputes or some privacy disputes. COGNICOR[17] has introduced fully automated complaint handling system, with highly evolved use of artificial intelligence for natural language processing of complaints combined with automated negotiation.

Some public institutions offering online dispute resolution are also suitable for handling dispute over free services. Austrian Internet Ombudsman[18] has proven to be good facilitator of disputes citizens have with certain internet services. Funding of public institutions, that usually comes from state's budget, guarantees more independence than when provider of ODR is commercially funded or profit oriented (CORTES, 2010). Therefore, public institutions should be even more appropriate venue to seek redress over specific disputes that originate in free internet services.

At this stage of development, online dispute resolution would benefit both from public support through appropriate legal framework and innovation from private sector. At the moment, it seems that we have international community support, non-comprehensive legal framework (existing and proposed) and several (but not to many) private initiatives to cater the current e-market. ODR regulators need to recognize the evolution in interactions of the actors in global society as well as new social bonds they create (POBLET; CASANOVAS, 2010).

[16] http://www.modria.com/.
[17] http://www.cognicor.com/
[18] http://www.ombudsmann.at/

We believe that following condition need to be fulfilled to have successful independent ODR system for handling dispute over free services:

- Legal certainty in providing free services (clear legal rules),
- Legal framework for ODR to support dispute resolution over free services,
- Incentives for parties (providers and users),
- Appropriate ODR mechanisms (innovation in technology supporting ODR, free or low cost ODR business model etc.)

We have exemplified some inadequacies in existing ODR regulation (EU) and in proposals for global legal framework (UNCITRAL). Maybe solution lies in sector specific ODR for specific service or in trying to find ways to incentivize bigger providers even though they have not shown any interest in ODR so far for possible outcomes of these initiatives.

While we do not pay the money for the use of a free service or software, we certainly pay in the amount of time, attention and effort we give to the service and to the brand. The fact that we use it has a reputation aspect that could finally, from the business point of view, transform into "network effect". The trust of users is essential for network, so should we consider ODR as a trust building tool for these services and facilitator of new social interactions as well? That remains to be further researched.

7 Conclusion

The main goal of this paper was to point out to some inadequacies of certain regulatory solutions for ODR rules and schemes from the aspects of growing online business model of free services. How should we deal with consumer ODR for services using freemium or other business models for free services? Are users of free services entitled to consumer protection? While we do not pay the money for the use of some service or software, we certainly pay in the amount of time, attention and effort we give to that service or business.

The EU is excluding free service by the mere definition of the service. UNCITRAL's Working Group III is designing global legal framework for providing redress for the services, but does not leave much room for the disputes over free services. Since their final proposal remains to be seen, the fact that big number of services in today's e-commerce falls under the category free should at least effect some modifications in the way the proposal defines the scope of application. This article argues the need for ODR legal framework to support dispute resolution over free services to allow independent, accessible and easier global access to redress in today’s e-commerce.

These issues should be given closer look in future if we want to use ODR to answer the need for redress over otherwise easily accessible services. At this stage of development, online dispute resolution would benefit both from public support through appropriate legal framework and innovation from private sector. ODR regulators need to recognize the evolution in interactions of the actors in global society. Even if we are protected in some cases by other laws (i.e. in domain of privacy), maybe we should reconsider giving choice or additional tool to handle conflicts and problems in our interactions with free online services, and not rely solely on efficiency and accessibility of national courts for disputes over free services.

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