

Brand on UNCITRAL Online Dispute Resolution Project

Ronald A. Brand (University of Pittsburgh School of Law) has posted Party Autonomy and Access to Justice in the UNCITRAL Online Dispute Resolution Project on SSRN.

The United Nations Commission on International Trade Law (UNCITRAL) has directed its Working Group III to prepare instruments that would provide the framework for a global system of online dispute resolution (ODR). Negotiations began in December 2010 and have produced an as-yet-incomplete set of procedural rules for ODR. It is anticipated that three other documents will be prepared, addressing substantive principles to be applied in ODR, guidelines and minimum requirements for ODR providers and neutrals, and a cross-border mechanism for enforcement of the resulting ODR decisions on a global basis.

The most difficult issues in the ODR negotiations are centered on the coordination of the ODR process with national rules of private international law (conflict of laws), national rules of consumer protection, and the international arbitration law framework. If any global system of ODR is to be successful, it must avoid difficult questions about the application of national mandatory rules of law, it must be considered to provide fair procedures and results for consumers, and the results obtained must be enforceable across borders. This will only happen if the system respects the ability of individual parties (regardless of category) to enter into binding ODR agreements at the time they form the basic contract for an online transaction.

This article reviews international efforts at constructing an acceptable system of ODR for low-value high-volume online transactions, and addresses the role of party autonomy in the success of any resulting ODR system. The ODR project will fail if parties are denied the autonomy to opt into the resulting system of dispute resolution. Party autonomy is key to the difficult issues of consumer protection, applicable law, and enforcement within the existing international litigation and arbitration regimes. It makes no sense to design a system states agree is fair to all and then, through rules that require reference to national or regional laws, prevent the use of that system.

The paper is forthcoming in the *Loyola University Chicago International Law Review*.