

RESOLUTION OF INTELLECTUAL PROPERTY DISPUTES THROUGH ODR MECHANISM: ISSUES AND CHALLENGES

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ABSTRACT

This paper focuses on a nuance of dispute resolution that is on rampant rise in today's age of global spread and integration of technology. It explores disputes with respect to the IP's milieu and then advances to the applicability and emergence of ADR methods to intellectual property rights enforcement framework. The genesis of Online Dispute Resolution (ODR) and its possibilities to be the best effective mechanism for resolving IP disputes has been elaborated upon. As Information Communications Technology (ICT) is the basis upon which ODR operates which demonstrates that parties to a dispute need not be physically present within the traditional storefronts of courts in the country, their disputes can now be determined, via means of either *mediation, negotiation, arbitration or expert determination*, on an online and secure portal, this portal can either be state owned or privately managed. ODR has been accredited globally by initiatives like WIPO's e-ADR and ICANN's Uniform Domain Name Registration Policy (UDRP) in as early as 1999. In India the National Internet Exchange of India (NIXI) had come up with .IN Dispute Resolution Policy (INDRP) that integrated online methods to resolve domain registration disputes.

It is further argued in this paper that there can be various intersections where ODR and IP dispute overlaps in the future, however at the present juncture of time, ODR has influenced IP disputes predominantly on three fronts, namely, in *TM opposition proceedings, IP conflicts in e-commerce market* and false domain name registrations also termed as *cybersquatting*. All three of which have been profoundly elaborated in this paper. It is, however contended that the introduction of ODR is not as favourable as it seems since a large number of litigants in India are not tech savvy, therefore it is imperative to make people aware and well equipped to inculcate such a radical change in dispute resolution mechanism.

Keywords: *Intellectual Property Disputes, ADR, ODR, Domain Name Disputes.*

- I. Introduction**
- II. The Rise of Alternative Dispute Resolution in Intellectual Property Disputes**
- III. Detailed Examination of ODR in IP Disputes**
- IV. The Emergence of Global Standards**
- V. Domain Name Disputes and ODR**
- VI. Conclusion**

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I. Introduction

Civil litigation forms the basis from which traditional court structures assert, determine, and enforce legal and equitable rights. A dispute arises when some right is infringed/ violated or there occurs a '*disagreement*' between two or more persons enclosed around that right¹. In the IP context: occurs when a third party uses the subject matter for his own interest without the consent of the proprietor. While consent to a trademark most often can be recognized through a contract, the law also recognizes statutory exceptions under which third-party use is acceptable without such consent.

Litigation most often revolves around the extent of consent or whether some third party's use falls within a valid exception to infringement, taking into account the legal definition of infringement and any relevant statutory exceptions². Disputes can also occur even before the acquisition of IP rights, in opposition proceedings against trademark or patent registration, or when the validity of existing rights is challenged in invalidation proceedings. However, IP issues also might arise between the individual owners and the State concerning regulations that impact the exercise and enforcement of such IP rights. Because there are many different kinds of disputes, a general mechanism has developed for resolving IP disputes.

Under the TRIPS Agreement³, there is an assurance that member nations of WTO are enabled to incorporate in their domestic laws the procedure for the enforcement of IPR. This suggests that 'dispute resolution' has a quint-essential place in IP Law. Dispute Resolution is necessary within this realm of law because without a strong enforcement mechanism of IPR the exclusive rights conferred on authors/owners/proprietors would be rendered toothless.

Article 42 of TRIPS⁴ mandates all WTO members to "*make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right.*" The use of the term "*right holders*" rather than "*owner*" in TRIPS expands the class of persons who may bring legal proceedings concerning IP and echoes the realities of an international marketplace. Even though TRIPS prescribes minimum standards⁵ for measures of

¹ Beth Walston-Dunham (ed.), *Introduction to Law 225* (6th edn., 2012).

² Althaf Marsoof, "Intersections Between Intellectual Property and Dispute Resolution", in Irene Calboli and Maria Lilla Montagnani (eds.), *Handbook on Intellectual Property Research* (Oxford University Press, 2021).

³ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994).

⁴ *Id.*, art. 42.

⁵ Peter Van den Bossche, *The Law and Policy of the World Trade Organization: Text Cases and Materials* 741 (2nd ed. 2008).

enforcement, including civil procedures for dispute adjudication, WTO members remain at liberty to structure these standards within their respective legal systems.

Although owners of IP may file suits for quite a few strategic reasons, among which are warnings or coercing settlements, relief in the form of an injunction against the infringing activity is still the core for filing. The TRIPS specifies remedies that must be given by WTO members, such as damages⁶, injunctions⁷, and other remedial relief⁸.

Damages purport to make up for the hurt to the right holder resulting from infringement and require courts to grant damages whenever infringement was carried out with knowing or constructive knowledge of infringement. Courts must also be granted the discretionary power to order infringers to pay the right holder's costs, among those attorney fees. The TRIPS Agreement also allows for an award of profits and pre-quantified damages in cases of innocent infringement, though it does not compel such an award⁹.

The other major relief in IP is injunctive relief, which seeks to halt the current, as well as future, infringement. TRIPS mandates judicial authorities to be empowered to issue orders directing a party to cease infringing activities and also to bar such infringing goods from entering the country's territory¹⁰. Injunctions may be directed at parties who are engaging in infringement, such as ordering a Norwich Pharmacal order that requires disclosure of information pertaining to the identities of infringers.

Injunctions in the digital age have also been granted against Internet service providers and other online intermediaries for disclosures of information about infringements, infringers, and even blocking access to infringing websites. Often, interlocutory injunctions are granted at the start of a legal action, where they mainly aim at preventing irreparable injury during the pendency of the adjudication of the dispute.

In addition to damages and injunctions, TRIPS prescribes other remedies like the destruction of infringing goods and instruments of production without prejudice to any remedies available under the law of the member-nation concerned to the infringer¹¹, taking into account appropriate factors such as equitable remedies available in matters of intellectual property; and that regard being had to proportionality and the interests of third parties,

⁶*Supra* note 3, art. 45(1) (emphasis added).

⁷*Id.*, art. 44(1)

⁸*Id.*, art. 46.

⁹*Id.*, art. 45(2)

¹⁰*Supra* note 7

¹¹*Supra* note 8

judicial authorities are authorized but not obligated to order the disclosure of information about such third parties.

Specialized frameworks for IP Dispute Resolution

While TRIPS do not require specialized judicial systems in order to resolve IP Disputes¹², specialized IP courts are being established around the world in their various forms. For example, Belgium, France, India, Japan, and Singapore have established specialized divisions within existing courts and courts that are exclusively or partially dedicated to IP cases.¹³ Exclusive specialized IP courts have been established in countries such as Switzerland, Chile, Portugal, Brazil, Taiwan, Malaysia and Thailand. Other countries, such as China, have both special IP courts and divisions within regular courts.

Specialized IP courts have several benefits. Specialized IP judges would be more effective when addressing technical questions of both law and fact, so lesser errors and greater predictability about the outcome would exist. These courts also handle IP cases much more quickly than any other courts. There are some drawbacks, mainly in terms of high expenditure involved in setting up these courts and operating them efficiently, especially for countries lacking substantial resources and having an abnormally low volume of IP-related cases.

TRIPS sets out minimum standards that would govern the application and contain procedural requirements for resolution by judicial process. Again, rules of procedure remain as fundamental components of dispute resolution under these rules of intellectual property disputes within a legal system, WTO members exercise their discretion to take divergent approaches.

II. The Rise of Alternative Dispute Resolution in Intellectual Property Disputes

While traditional litigation remains the primary instrument for resolving disputes involving intellectual property, the use of ADR has lately gained significant grounds. Such a trend is brought about by various reasons such as the nature of ADR itself and its adaptability to changes in the nature of IP disputes. ADR refers to different ways of resolving disputes outside of the conventional courtroom, potentially offering a more efficient and cost-effective solution to traditional litigation¹⁴.

¹²*Id.*, art. 41(5).

¹³International Chamber of Commerce (ICC), “Adjudicating Intellectual Property Disputes: An ICC Report on Specialized IP Jurisdictions Worldwide” (2016)

¹⁴AakrutiAdwani, ShaistaPeerzada, *et.al.*, “ADR in Intellectual Property Disputes: Trends and Challenges” 45 *TuijinJishuJournal of Propulsion Tech.* (2024).

The most informal and flexible form is negotiation, in which the parties have complete control over the outcome. For mediation, a neutral third party facilitates a dialogue and seeks to advise parties on how to reach a mutually acceptable settlement. Both of these successful procedures result in a settlement agreement that is legally binding, at least under contract law principles. However, if a party fails to abide by the agreement, enforcement problems may arise, and further ADR or litigation could be necessary.

Probably the most formal and structured ADR method, arbitration requires the matter to be submitted to a arbitration tribunal whose decision is often binding. Like settlement agreements, a failure to comply with arbitral awards may need the intervention of the court to ensure enforceability. Indeed, the New York Convention has been quite pivotal in making cross-border recognition and enforcement possible.

There seems paradoxically to be an intrinsic contradiction in the application of ADR to IP disputes, particularly because these generally refer to unauthorized use by third parties of protected subject matter with no pre-existing contractual relations with the owners of such rights. However, several developments underline its growing relevance in this space. Commercial transactions are therefore increasingly assuming a globalized nature, and hence, more IP-related deals which require contractual arrangements such as licensing, franchising, assignments, and confidentiality agreements, most of which are settled using the ADR mechanism. In fact, even in those jurisdictions, which have an advanced structure for ADR-like Singapore, the courts are still active and are eager to persuade the litigants to try out mediation before seeking trial. The above act, therefore also accounts for the cases of ADR in dispute resolution relating to IP.

National and regional IP offices interact with WIPO to offer institutionalized frameworks that ease the use of ADRs for IP disputes. For example, IPOS, together with the WIPO Centre, offers financial incentives that make mediation relatively less expensive and hence more accessible to the parties involved. This has gone a long way in accelerating the development of new ADR methods to fit new online IP infringement challenges. Resolution of domain name dispute under the ICANN as well as the extrajudicial notice-and-takedown procedures that online platforms adopted represent this trend.

Thus, this growing usage of ADR either solely or in conjunction with court processes forms proof of the flexibility of ADR concerning shifting dynamics in IP and the rising intricacies of disputes over that area of IP. This development, therefore, shares the very

essence of the relevance of exploring the interplays between ADR and IP, which stimulates further research and exploration in this evolving area of the law.

Significance and Evolution of Online Dispute Resolution

These two technological inventions have thus radically altered the way business is conducted, forcing the dispute resolution forums to keep up with it. Traditional litigation, that is long-winding and expensive, can never hope to suffice as a dispute resolution tool, in a world where the new conflict of modern challenges of online trade and intellectual property disputes cannot be compared to other types of disputes.

Indeed, ODR platforms have remained hotspots and virtual forums meant to host issues submitted by parties seeking dispute resolution through negotiations, mediation, or arbitration. Information and communications technology utilizes ICT as a means of conflict resolution without the requirements of face-to-face appearances. These further cements the relevance of ODR in this age of digital time.

The complexity and speed of cyber-IP infringements prompt the need for an agile and effective dispute resolution mechanism that ODR will provide. It is worth underlining in particular the possibilities for transforming the legal landscape too from the old reactive, restrictive, legalistic approach to the new proactive, enabling, business-friendly model. This will be in tandem with the overall vision of having 'legal health' as an applicable tool in society, where individuals and enterprises are acutely conscious of their rights, as well as options available to enforce those rights to promote access to justice, an integral component of any strong legal system, as settled within our law of the land under Article 39-A¹⁵.

Benefits of ODR

The number of cases waiting to be heard in India's intellectual property offices is staggering. An official government report shows a huge backlog across patents, trademarks, designs, and copyright.¹⁶ As of July 31, 2022, there were 191,133 patent applications pending, either unexamined or awaiting a decision after examination. The trademark registry faces an even larger backlog, with 112,835 applications awaiting pre-examination, 337,781 in post-examination, and 242,277 under opposition.¹⁷ The Designs Wing has 3,851 applications

¹⁵The Constitution of India, art 39A.

¹⁶Office of the Controller Gen. of Patents, Designs & Trade Marks, "Pendency Rep. for Patents, Trademarks, Designs & Copyright" (2022)

¹⁷*Ibid.*

awaiting examination and 15,341 amended cases pending.¹⁸ The Copyright office also struggles with a backlog of 471 applications pending examination, 11,625 discrepant cases for disposal, and 1,770 applications waiting for the submission of work.¹⁹

These numbers highlight the urgent need for solutions beyond traditional court systems. Both ODR and ADR offer promising alternatives. By utilising methods like mediation and arbitration, ODR and ADR can provide faster and more cost-effective resolutions, alleviating the strain on traditional courts and offering parties a more efficient path to settling their disputes.

A host of benefits makes ODR so essential an alternative to traditional approaches to dispute resolution, including the wide advantage of convenience, where parties can participate by remote access, thus eliminating travel and physical presence. This feature arguably makes ODR specially, suited to handle the geographically dispersed nature of online IP disputes, which often involve parties located in different jurisdictions. Additional to that dimension is the speed of ODR, which becomes an added attractiveness in enabling a resolution of disputes. ODR reduces procedural time delays traditionally associated with litigations, thereby accelerating communication procedures, which helps deliver results much quicker over cases, such that faster resolution translates into cost-effectiveness, which is a fact that is of significance for either individual or business parties.

ODR helps much in reducing the costs incurred in legal representation, travel, and administrative processes. It opens access to dispute resolution, especially that most required by small and medium enterprises.

Genesis of ODR

While the origins of ODR can be traced directly to the development of e-commerce and expansion of the Internet which shaped a different class of disputes unrelated to the state of mind of judicial and traditional court systems, the key role of private sector initiatives like eBay's Resolution Centre established in 1999 played in forging the new landscape of ODR²⁰. Realizing that a specific system for the mediation of disputes emerging from online transactions was lacking, the eBay platform, which was one of the pioneers of online mediation, provided mediation as the primary basis through which online buyer-seller disputes were resolved, which is considered the first step in the journey towards ODR.

¹⁸*Ibid.*

¹⁹*Ibid.*

²⁰Ethan Katsh and Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (Jossey-Bass, 2001).

Success in these pioneering private sector initiatives in dealing with online disputes attracted governments and judiciaries worldwide to encompass and integrate ODR into the broader framework of law. This acknowledgment together with the developments in ICT provided the premise for the proliferation and diversification of the ODR map, which varies from clearly designed platforms focused on consumer-to-consumer disputes, cross-border transactions, and domain-specific conflicts like intellectual property. It means that the contemporary ODR can be defined in a wide range of forms that vary from business-owned to government-owned, and even court-annexed systems.

Especially, moving the integration of AI and ML further into ODR platforms will pave the way for more avenues for automatic machine solutions capable of expansion and protraction of prospects for ODRs. This form of programmed mode of dispute resolution has also been conducted by the private sector, for instance, Smartsettle and Cybersettle which incorporated mechanisms such as blind-bidding, algorithmic resolutions which thus shows that ODR has equal scope for expansion and growth with respect to technology innovations in this field.

WIPO recognizes ODR

The World Intellectual Property Organization has also recognised the importance that needs to be attached with online means for the dispute resolution processes because it acts as the world's largest association for disputes over IP. Options like WIPO e-ADR are one of such alternative tools used to help parties determine their cases online, and help them build and maintain cases that are under WIPO Mediation, Arbitration, Expedited Arbitration or Expert Determination Rules. WIPO e-ADR does this through a single secure portal by providing parties involved in WIPO e-ADR proceedings with the opportunity for sharing and accessing the information related to their case²¹.

III. Detailed Examination of ODR in IP Disputes

Trademark Opposition Proceedings and ODR

“Any person” who chooses to object to a trademark application may do so by sending a Notice of Opposition on the approved form and paying the required fee, as per Section 21 of the Trade Marks Act of 1999²². The Opponent is the party that files a notice of opposition. The opponent is not required to own a registered trademark. He may be a consumer, buyer, or member of the general public who intends to use the items or services. According to the

²¹World Intellectual Property Organisation, WIPO eADR available
t<<https://www.wipo.int/amc/en/eadr/wipoeadr/>> (last visited Dec. 20, 2024).

²²Trade Marks Act 1999, s. 21.

thinking behind this, the opponent is not just representing himself but also the broader public, as having two similar marks in the market can only lead to confusion.²³

Trademark opposition is a process that seeks to safeguard distinctive trademarks and the elimination of consumer confusion²⁴. Trademark opposition cases are based on procedural rules, including notice and counterstatement that should be filed, among other evidence to be filed. The opponent or appellant shall provide evidence of his trademark and thus prove that the mark does not cause confusion, similarity, and, above all, is in good faith.

At bottom, every trademark opposition posits as its core claim that allowing a pending trademark to issue would under any one or more theories of law prove somehow unfair or illegitimate to the Plaintiff, or Opposer.

The Trademark Opposition Board is the regulatory body entrusted with the task to oversee and adjudicate the trademark opposition proceedings. The rationale behind this regulatory body is to afford third parties the opportunity to be heard regarding such trademark registration applications which is allegedly infringing their rights. The trademark opposition process in India is regulated under the Trademarks Act, 1999²⁵ read with the Trademarks Rules, 2017 and such opposition is filed before the Trade Marks Registry.

As such, Trade Marks Act, 1999 provides an all-inclusive framework to facilitate the registration of trademarks in India. The owner of the brand has to apply by filing Form TM-A for commencing the registration process. After filing of the application, a trademark is published in the journal of Trade Mark along with providing exposure for public scrutiny and enabling the public for review of the mark and objection thereto. If any third party believes that the trademark may conflict with its own, then within a period of four months following publication, it can oppose its registration²⁶.

The process of opposition is represented under Section 21 of the Trade Marks Act, 1999, and provides a platform to any person or company or entity that may be harmed due to registration of interests damaged. A Notice of Opposition can be produced by using Form TM-O.²⁷ The registration would thereby avoid causing confusion or causing damage in the market through possibly conflicting trademarks.

²³Selvam & Selvam, Trademark Opposition in India, available at <<https://selvams.com/india/trademarks/opposition/>> (last visited Dec. 20, 2024).

²⁴WIPO, Trademarks, available at <<https://www.wipo.int/en/web/trademarks>> (last visited Nov. 8, 2024).

²⁵Trade Marks Act, 1999, (India).

²⁶Trademark Opposition, CIPRPF, available at <https://www.ciprpf.com/trademark_opposition.php> (last visited Nov. 8, 2024).

²⁷*Id.*

Absolute and relative grounds are the two important grounds to oppose a trademark application. Absolute grounds, as classified in Section 9 of the Trade Marks Act²⁸, are immanent features of the mark itself. For example; a trademark can be opposed if it coincidentally turns out to be merely non-distinctive, or merely descriptive of the goods or services because of its nature, or even scandalous or offending. In addition, the marks which may offend religious feelings or violate the Emblems and Names (Prevention of Improper Use) Act, 1950²⁹ are also prohibited.

Relative grounds for opposition, dealt with in Section 11 of the Act, are conflicts with earlier trademarks. Any mark which may likely be considered similar to or identical to a trademark existing prior to it is more probable to face opposition. It protects the reputation as well as the distinctiveness of an already established brand against confusion to consumers. In case the applicant's mark is likely to cause damage to the reputation of a reputed trademark even if it belongs to different classes of goods or services, a notice can be issued against such an application³⁰. Once a Notice of Opposition is filed, the same is forwarded to the applicant, who is then required to file a Counter Statement within two months. If he does not submit the Counter Statement within the stipulated time, the application is deemed abandoned. The response given allows the applicant to plead to defend the trademark and justification for registration of the trademark.

After the filing of the Counter Statement, the applicant and opponent can file proofs for their respective claims. Opposition can present an affidavit, whereas the applicant may submit evidence to override the opposition. A hearing takes place later after both of them file the proofs. All such details are considered by the Registrar, and he announces the final verdict based on the arguments and proofs filed³¹.

In such situations where the parties are based outside India, the Registrar shall insist upon depositing a security regarding the cost of the proceeding. This mechanism would thereby ensure that the process is just and the contesting parties are interested in the legal challenge. Otherwise, without such a security, the opposition or application could be regarded as abandoned, thereby protecting the interests of the parties involved.

Finally, errors in the documents filed during the process of opposition would be corrected because the Registrar has the powers to allow amendments to the Notice of Opposition or

²⁸Trade Marks Act, 1999, s.9.

²⁹Emblems and Names (Prevention of Improper Use) Act, 1950, No. 12, Acts of Parliament, 1950 (India).

³⁰Watal, Jayashree, *Intellectual Property Rights in the WTO and Developing Countries* (2002).

³¹*Administrative Steps Involved in Trademark Opposition*, INDIAN PATENT OFFICE, available at <<https://ipindia.gov.in/administrative-steps>> (last visited Nov. 8, 2024).

Counter Statement. This is in line to ensure an accurate and clear process so that it mirrors the nature of the actual dispute. The last is the hearing where both parties have a chance to be presented before a hearing officer. He weighs the evidence and arguments of both parties and makes his decision based on them. Both parties can ask for reconsideration if they are not satisfied with the officer's decision. The hearing is the last step of trademark opposition process as only non-conflicting marks or with new brands created or with public interest would get their registration. Once both parties have established their evidence, the Registrar shall fix a date for hearing and communicate the same to both parties concerned. Both the parties can make the request for adjournment of the hearing. The applicant is required to provide justification for the same as per the Form TM-M and also provide such a request at least three days before the date when such adjournment is required. However, to accept the request, it is left to the discretion of the Registrar which will be informed to the parties as per the rules. In case any of the parties do not attend the hearing on the said date, *ex-parte* order shall be passed by the Registrar. However, if both the parties appear at the hearing, then the Registrar is required to give an opportunity to listen to and consider the evidence received to both the parties and will decide upon the registration of the trade mark, with an end result of the proceedings³².

In this regard, *M/s Nandhini Deluxe v. M/s Karnataka Co-Operative Milk Producers Federation Ltd.*³³ is one such case where the differences surfaced between the parties on "Nandhini" trademark. The appellant happens to be a restaurant chain, which had applied to get its mark "Nandhini" registered for food products against a respondent who was doing business under the very name "Nandhini", and who was dealing in milk and milk products, opposing the registration with the contention that the appellant's mark was almost identical to their registered trademark. The crux was whether appellant's application of "Nandhini" was indistinguishably similar to respondent's trademark and whether it would cause confusion amongst the buyers. However, The Hon'ble Supreme Court of India gave the verdict in favour of respondent by basing the argument with the fact that respondent's mark "Nandhini" was already well-known. The court found that use of the mark by the appellant can cause confusion of the minds of the average consumer, and therefore the mark "Nandhini" cannot be registered and the respondent has monopoly rights in "Nandhini".

³²*Trade Marks Rules, 2017*, No. G.S.R. 1122(E), Rules of the Ministry of Commerce and Industry, 2017 (India), available at <<https://www.ipindia.gov.in/TM-Rules-2017.html>> (last visited Nov. 8, 2024).

³³*M/S Nandhini Deluxe v. M/S Karnataka Co-Operative Milk Producers Federation Ltd.*, AIR 2018 SC 3516.

Similarly, in *M/s ITC Limited v. Nestle India Limited*³⁴, ITC Limited filed a case against Nestle India for their use of the term “Magical Masala” for Maggi Noodles, which they claimed had caused damage to their trademark “Magic Masala” for Sunfeast Yippee Noodles. ITC alleged that “Magical Masala” bore deceptively close resemblance to its mark, whereas Nestle pleaded the case that the term was a generic term to describe the flavour and not a trademark. The two basic issues pleaded were whether the use of “Magical Masala” could be said to amount to passing off, whether it had acquired distinctiveness, and whether it can be termed as a trademark. However, the learned Madras High Court did not agree with ITC and held that “Magic Masala” was a descriptive term and therefore was not registered as a trademark. The court also held that the branding of that product was clear differentiating factor and led no confusion between the products, thus, the respondent's use of “Magical Masala” was not a trademark violation against ITC.

To sum it up, trademark opposition is a critical guard for the businesses and consumers to have, so that the market can be clearer, more transparent, and less confusing. This process is especially poignant in the field of ODR since it enables companies to power up their ability to resolve customer claims against competitors without having to go through costly and time-consuming court sessions. Through comparison the registration of a possibly misleading and confusing trademark, opposition thus grants the coverage of the only distinctive and unique trademarks, which would further lead to no consumer confusion and promotion of fair competition.

Trademark opposition facilitates a fair platform, where two sides can present their evidence and arguments for the appellant to establish that their mark does not cause confusion, is not similar to an existing mark, and is not made in the bad faith³⁵. Differential procedure embedded in this system, both sides, are given the chance to protect their interests which helps create the feeling of justice in the trademark disputes hung up on. Based on the effectiveness of the ODR platforms, this process will ultimately lead to an orderly and peaceful marketplace. It helps businesses guard against dishonest competition, it is a trademark of the truth, and it gives the consumers an opportunity to make sound judgments when shopping³⁶. Trademark opposition by means of transparency and fairness not only

³⁴*M/S ITC Limited v. Nestle India Limited*, AIROnline 2020 Mad 914.

³⁵Adelman, M. J., &Baldia, S., “Prospects and Limits of the Patent Provision in the TRIPs Agreement: The Case of India”, 29 *VAND. J. TRANSNAT'L L.* 507 (1996).

³⁶K. Amy, “Harmonization and Its Discontents: A Case Study of TRIPS Implementation in India's Pharmaceutical Sector”, 97 *Calif. L. Rev.* 1571 (2009).

harmonizes individual businesses but, in the aggregate, energizes the sector and makes it more cohesive.

E-Commerce IP Disputes and ODR

Intellectual property concerns are becoming more significant in the digital marketplace due to the quick expansion of e-commerce and dependence on digital technologies. These IP safeguards form the essential foundation upon which the entire online marketplace is constructed. One of the major disputes arise in the latency of Patents and their infringement. Patents play a crucial role in shielding the cutting-edge technologies and trailblazing business models that drive e-commerce forward. By granting inventors and innovators the exclusive rights to their creations, patents ensure that the pioneers of the digital age can reap the just rewards of their hard work. This, in turn, incentivizes them to keep investing in the next generation of advancements that will shape the future of online commerce.

Copyrights, on the other hand, safeguard the original content that enriches the online experience for consumers. The Global Intellectual Property Convention, 2020 states that within the intellectual property in the digital age, copyright infringement is one of the key issues. The increasing use of digital content has made it easier to copy and circulate works which are subjected to copyright without due authorization. As a result, producers and distributors of intellectual property have suffered huge losses. The impact of open-source software on intellectual property is another problem.

And let's not forget trademarks the indispensable tools that allow businesses to cultivate strong, trusted brand identities in the vast, crowded expanse of the internet. Much like a physical storefront or product packaging, trademarks help shoppers instantly recognize and connect with the merchants they choose to engage with, fostering loyalty and repeat business. Taken together, these diverse forms of IP rights form an interlocking system that fosters creativity, encourages investment, and builds consumer confidence in the dynamic world of e-commerce. They are the invisible scaffolding upon which the entire digital marketplace is constructed - the unsung heroes that power the e-commerce revolution³⁷.

And let's not forget trade secrets - the confidential insights and strategies that give online businesses that all-important competitive edge. In an era of breakneck innovation, protecting these sensitive information assets is critical to maintaining a sustainable advantage. Taken together, these diverse forms of IP rights form an interlocking system that fosters creativity,

³⁷Ou Dan, "The Status Quo and Countermeasures of Cross-Border E-Commerce Business Disputes: A Case Study of Zhejiang", *J. Heilongjiang Cadre Coll. Of Politics & Law Mgmt*, Issue 1, 69 (2017).

encourages investment, and builds consumer confidence in the dynamic world of e-commerce. They are the invisible scaffolding upon which the entire digital marketplace is constructed.³⁸

In the interconnected world which we have today, ODR is not just convenient, it is becoming essential. As global e-commerce continues to surge year after year with remarkable double-digit growth, we're seeing a fundamental shift in how businesses and consumers handle disagreements. Think back to 2001, when experts Katsh and Rifkin made a fascinating prediction: traditional courtroom battles and face-to-face mediation would simply be unable to match the incredible efficiency of their digital counterparts³⁹. They were absolutely right. The old ways of resolving disputes, with their time-consuming meetings and costly procedures, just can't compete with the speed, convenience, and cost-effectiveness of online solutions.

Then came the COVID-19 pandemic, which acted like a fast-forward button on this digital transformation. What might have taken years to achieve in normal times happened in a matter of months. The pandemic didn't create the need for online dispute resolution, it simply revealed how inevitable and necessary this shift to digital really was. It showed us that the future of conflict resolution isn't just digital-friendly; it's digital-first⁴⁰. In essence, ODR isn't just an alternative anymore, it is becoming the new normal in our increasingly digital world. It is a perfect example of how technology isn't just changing our lives; it is fundamentally improving how we solve problems and settle differences in our global marketplace.

Due to the fast expansion of internet and digital technology, the world has become more interconnected than ever before. The efficiency and simplicity of the internet have become dominant leading to unprecedented growth of e-commerce and other financial transactions⁴¹. As e-commerce has grown, so too has the need for legal frameworks to govern these new digital marketplaces. ODR has emerged as a crucial mechanism for addressing conflicts that arise in the e-commerce space. ODR is considered a form of ADR that is enabled by ICT.

In essence, ODR represents a brand-new dispute resolution method that combines the principles of ADR with the capabilities of modern digital tools and platforms. It has become

³⁸Yanlin Wu, "A Review of Issues in the Development of Online Dispute Resolution (ODR) from the Perspective of E-Commerce Disputes", 7 *J. Soc. Sci. Humanities & Lit.* 1, 1-15 (2024).

³⁹Ethan Katsh and Janet Rifkin (eds.), *Online Dispute Resolution: Resolving Disputes in Cyberspace* 226 (Jossey-Bass, 1st edn., 2001).

⁴⁰F. Abedi, J. Zeleznikow, et.al., "Universal Standards for the Concept of Fairness in Online Dispute Resolution in B2c E-Disputes" 34 *Ohio State Journal on Dispute Resolution* 361 (2019).

⁴¹Dr. J. Suresh Kumar & Dr. D. Shobana, "E-Commerce and Intellectual Property: Resolving Disputes in the Digital Marketplace", in *National Conference Proceedings "Intellectual Property Rights In Digital Era: Issues And Challenges"* 53 (ISBN: 978-81-956870-7-7, 2023), available at <www.vvfgc.ac.in>

an essential part of the evolving e-commerce landscape, providing a way for buyers, sellers, and platforms to efficiently and effectively resolve conflicts without the need for traditional in-person legal proceedings⁴². The growth of ODR reflects the larger transformation underway as the internet and digital technologies continue to reshape every aspect of our daily lives, including how we shop, pay for goods and services, and handle disputes that may arise. This transition is creating new challenges but also new opportunities to build more efficient, equitable, and accessible systems for resolving conflicts in the digital age. Both online and offline resolution of disputes can take place through ODR mechanism. The settlement process, not the source of the claim, is the main focus of the online section.

The very nature of the e-commerce sector, however, makes it prone to intellectual property disputes. The fast-paced, dynamic environment, characterized by intense competition and frequent cross-border transactions, creates ample opportunity for conflicts to arise. The increasing prevalence of e-commerce has led to a surge in market competition, with multiple stakeholders vying for consumer attention and market share. Transactions often involve parties located in different jurisdictions, adding complexity to legal proceedings and enforcement.

The specific types of IP disputes common in e-commerce are diverse. Disputes may involve patent infringement claims, particularly concerning software and business methods. Copyright infringement allegations are also frequent, often relating to the unauthorized use of digital content, including images, music, or literary works. Trademark disputes commonly involve the unauthorized use of similar or identical marks, creating confusion among consumers and potentially diluting the distinctiveness of established brands. Beyond these traditional IP rights, e-commerce also gives rise to disputes concerning other forms of IP. E-commerce platforms are increasingly dealing with matters related to white-label and private label products, where branding and ownership issues can lead to disputes. Moreover, the sale of geographically indicated products online presents unique challenges related to authenticity and origin, further expanding the range of potential IP conflicts.

ODR presents a viable solution for addressing many of these e-commerce IP disputes. Its inherent accessibility and efficiency make it particularly well-suited for resolving cross-border disputes, which are common in the online marketplace. The ability to conduct proceedings online eliminates the need for physical presence and facilitates participation

⁴²E.Katsh, J. Rifkin & A.Gaitenby, "E-Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of eBay Law", 15 *OHIO ST. J. ON DISP. RESOL.* 705, 705-730 (1999-2000).

from parties located in different countries. The streamlined nature of ODR can also contribute to faster and more cost-effective resolutions compared to traditional litigation.

IV. The Emergence of Global Standards

As digital commerce expanded, nations recognized the need for coordinated protection strategies. This led to groundbreaking initiatives through the WIPO, whose specialized treaties address everything from digital copyright protection to ensuring content accessibility for visually impaired individuals.

The TRIPS Agreement has been notified as being the emerging innovative change, carrying out essential standards for protecting intellectual property. The historic Berne Convention's principles of automatic protection have proven them to be remarkably adaptable to digital challenges across the world in order to resolve IP disputes.⁴³

Data Protection and Privacy Intersections - The rise of data protection regulations, exemplified by GDPR, has added another layer of complexity. These frameworks don't just protect personal information, they have introduced new considerations for how we handle intellectual property in the digital sphere.

Cross-Border Collaboration and Enforcement - Perhaps most fascinating is how nations are working together to address enforcement challenges. The borderless nature of digital commerce has necessitated unprecedented cooperation in areas like:

- Unified enforcement strategies
- International dispute resolution
- Coordinated anti-piracy efforts
- Standardized takedown procedures

As we venture further into this digital age, protection mechanisms continue to evolve. Success depends on maintaining systems that protect creators while fostering innovation. This balance requires:

- Adaptable legal frameworks
- Technological innovation in protection methods
- International cooperation
- Flexible response mechanisms to emerging challenges

⁴³Sandeep Ghosh, "ODR Strategies for E-commerce IPR Disputes", *Centre For Internet And Society*, <https://www.circ.in/pdf/ODR_Strategies_for_E-commerce_IPR_Disputes.pdf> (last visited Nov. 8, 2024).

This is exactly how the digital space is reframing our imaginative expressions of ownership and intellectually protected rights, in ways never beforehand conceived. The world of instant sharing, AI-generated art, and blockchain certificates of ownership demands protection systems that will be more robust and pliable. Intellectual property could be like the perfect living, breathing ecosystem; rather than the inflexible rule book, something that fosters innovation while making sure the creator gets their fair share in this hyper-connected digital age.

Concomitant to growth in e-commerce would be the growth of the challenges that it poses. Consumer dissatisfaction is one false and superficial root cause: what is really fundamental is that there are no mechanisms to take care of possible infractions. We cannot just let violations of consumer rights go unpunished based on mere absence of evidence. There has to be a comprehensive solution somehow addressing all concerns of the parties involved. Here are some of the pertinent points:

1. **Bargaining Power Imbalance:** The consumers signing up for the electronic commerce will hardly be aware of their “terms of use” and “terms and conditions”. These may at times restrict the consumers' powers to appeal to legal authority. Automatized agreement-making may make it inevitable for the consumer to bear the cost of ADR mechanism for itself, or even the business's cap on liability for itself.
2. **Liability Deflection:** Most e-commerce firms sell only third-party products on their website. Even the recent amendments to consumer protection laws introduced the element of “product liability”, but there has been very little effective action taken against the manufacturers when the buyers are faced with disputes over the products sold by one of their retailers on its website.
3. **Counterfeit Products:** One of the major problems in e-commerce is counterfeit products. By reports, India loses over a trillion rupees annually due to counterfeit products. The COVID-19 crisis has increased this problem further-the trading of illegal products grew along with emergent governance gaps new vulnerabilities in the chains of supply, and increased customer demand.

Blockchain technology and artificial intelligence became new layers of intricacy in safeguarding intellectual property. Consider, for example an AI system composing a breath-taking symphony or that creates a masterful painting. Here, the ownership becomes a complex web of developers, users, and the AI itself. Such systems, educated on vast libraries of human imagination, provoke all established ideas about originality and fair use.

Enter, then, non-fungible tokens (NFTs), digital certificates that changed the way of thinking about ownership in the virtual world. Blockchain-based authenticity markers that open new revenue streams to creators introduce fresh challenges in the creation of unauthorized NFTs and in the difference between owning a token and holding rights on the underlying creation.

V. Domain Name Disputes and ODR

A website's domain name can be a single word or a combination of terms that contributes to the identification of the website's connection to a specific person. Domain names are utilized for finding a website and are commonly referred to as *Uniform Resource Locator (URL)*. Having a strong domain name is crucial for businesses looking to establish a global presence. Domain Names are composed of primarily two components, namely top-level domain name and second level domain names. They can be straightforwardly recognized, such as www.msn.com, where '.com' is the top-level domain and 'msn' is the second-level domain. Any person is able to buy a domain name from an authorized registrar for a specific period and can extend it when it expires.⁴⁴

Domain names are the unique addresses assigned to websites and serve as critical entrance points for internet enterprises⁴⁵. Because domain names are critical for internet visibility and brand recognition, resolving disputes is critical to defending the rights of legitimate owners. The commercialization of the internet during the 1990s, a watershed moment in digital property rights, is intrinsically linked to the emergence of domain name conflicts. Prior to the creation of the Uniform Domain Name Dispute Resolution Policy (UDRP) in 1999, domain-related conflicts were generally resolved through traditional court systems⁴⁶.

Various methods to resolve disputes of cyber squatting or domain name infringement have been adopted by the international bodies as well as in India. There are three primary ways that domain name infringement occurs:

1. Cyber-squatting is an act of registration of domain names without intending to utilize them for legitimate commercial or personal purposes. Instead, these “cyber-squatters” save the domains, effectively “parking” them, with the goal of selling them at exorbitant prices to the legitimate owners or authorized users in the future. This is a crime against

⁴⁴Sana Singh, *Domain Name and Related Disputes*, Mondaq, May 10, 2021, available at www.mondaq.com/india/trademark/1080052/domain-name-and-related-disputes (last visited on Nov. 5, 2024).

⁴⁵*Merriam-Webster*, Merriam-Webster, available at <https://www.merriam-webster.com/dictionary/domain%20name> (last visited on Nov. 5, 2024)

⁴⁶Mueller, Milton L., “Ruling the Root: Internet Governance and the Taming of Cyberspace”, *MIT Press* (2002)

intellectual property of a person or firm/company/brand/trade etc. alongside this strategy is troublesome for corporations and people seeking to develop a credible web presence because they may need to negotiate with these holders to obtain their own domains. Cyber-squatting is likely to be the most crucial and necessary act of concern in today's world⁴⁷.

2. The practice of "linking and framing" represents another common method of intellectual property infringement. In this approach, an individual or group will design a webpage intended to mimic the aesthetic of a renowned brand, creating the false impression of an association with the reputable company. Frequently, consumers who access this website through a provided link are led to believe they are engaging with the well-established enterprise they had initially sought. This form of transgression exploits the trust and familiarity that customers have with the brand, often causing them to interact with what they perceive to be a genuine entity.
3. An additional infringing tactic is the utilization of Meta-tagging. While this approach may appear relatively minor, it holds significant influence. The act of adding keywords or "tags" to the code of a website is undertaken with the intent of impacting search engine rankings and driving increased traffic to the site. The employment of social media hashtags, including those unrelated to the searched brand or company can augment the visibility of the illegitimate domain website within search results. This strategic manoeuvre, aimed at manipulating search engine algorithms, creates difficulties for consumers in distinguishing between legitimate and fraudulent business entities, leading to conflicts among the companies involved.

The laws of the nation in which a trademark has been registered provide protection for it. Additionally, a trademark may be registered more than once in different nations worldwide. Customers can purchase a domain name from anywhere in the world because the internet makes it possible for us to access information regardless of where we are. Although this will help the global link by giving domain names global exclusivity, national regulations might not always be enough to effectively protect a domain name⁴⁸. WIPO and ICANN were used to impose international regulation.

⁴⁷Sukrut Deo & Sapna Deo, "Cybersquatting: Threat to Domain Name", 8 *Int'l J. Innovative Tech. & Exploring Eng'g 6S4* (2019)

⁴⁸ALG India, *Domain Name Protection: Is Your Interest Legitimate?*, ALG India, available at <https://www.algindia.com/domain-name-protection-is-your-interest-legitimate/#_ftn1> (last visited on Nov. 5, 2024)

Out of 171 countries that are part of the WIPO, India is recognised as a member amongst them. WIPO provides its member nations with a platform for the creation and execution of protecting intellectual property on a global scale via international conventions and other measures⁴⁹. The establishment of ICANN as a world-wide administrator of internet in 1998, followed by the implementation of the UDRP (Uniform Domain Name Dispute Resolution Policy) in 1999 to resolve international domain name disputes in an effective and cost-efficient manner⁵⁰. It was a path breaking milestone in the past, especially for overcoming apprehensions arising from the fact that internet is borderless and it might impinge upon the intellectual property rights of others.

The UDRP was established as a dedicated framework for handling disputes related to the abusive registration and use of domain names. The policy focuses specifically on generic top-level domains, aiming to combat cybersquatting and other practices that exploit domain names for unfair advantage or infringement. The UDRP stands out as an example where ODR mechanisms have been fully integrated into an IP dispute resolution system. The entire process is designed to leverage technology for a streamlined and accessible experience. Proceedings are conducted entirely online, allowing for global participation and removing the need for physical presence. Communication and document submission occur primarily through email, further enhancing efficiency and accessibility.

ODR in domain name disputes offers several distinct advantages. The online format translates to significant cost savings compared to traditional litigation, making it a more feasible option for individuals and businesses seeking to protect their domain name rights. Additionally, the UDRP process operates on expedited timelines, often reaching a decision within a 45–60-day timeframe. This significantly reduces the time and resources spent on resolving disputes, allowing parties to focus on their core activities. The enforcement of UDRP decisions is facilitated by their self-enforcing nature. Once a decision is rendered, registrars are obligated to implement the outcome, be it the cancellation or transfer of the disputed domain name. This eliminates the need for further legal action, ensuring swift and effective enforcement.

⁴⁹*Satyam Infoway v. Sifynet Solutions*, AIR 2004 SC 3540

⁵⁰Sourabh Ghosh, “Domain Name Disputes and Evaluation of The ICANN’s Uniform Domain Name Dispute Resolution Policy”, 9 *J. INTELL. PROP. RIGHTS* 424, 424-439 (2004)

ODR is classified as ADR in this scenario. The modification is in how the ODR converts the conventional perspective into a creative approach that only employs technology⁵¹. When an online transaction or interaction results in a disagreement in an ongoing transaction, the concept of an ODR can be researched⁵². There is presently no particular law in India that deals with domain name disputes or cyber squatting. These problems are not addressed by the Information Technology Act, 2000 despite the fact that it covers a number of cybercrimes. Based on the brand reputation, domain names might be regarded as trademarks, people can nonetheless file under the common law remedy of passing off or infringement under the provisions of the Trade Marks Act of 1999 even in the lack of specific legislation against cyber squatting.

The National Internet Exchange of India (NIXI) is in charge of the .IN Registry, which created the .IN Dispute Resolution Policy (.INDRP) to handle domain name disputes. India's country code top-level domain (ccTLD), .IN, is maintained and secured by the independent .IN Registry. The .INDRP offers a structure for resolving disputes when domain registrations may clash with valid trademark rights, aligning itself with international principles and pertinent laws of the IT Act. Proceedings under a complainant's trademark is confusingly similar to a registrant's domain name, the registrant lacks genuine interests, or the domain is registered in bad faith, an INDRP may be started⁵³.

When it comes to combating cybersquatting, India has seen some really important legal precedents over the years. Amongst the first few cases, the case of *Rediff Communication v. CyberBooth*⁵⁴ decided by the Bombay High Court is significant. Court in this matter, recognized that domain names can actually hold significant value and importance essentially functioning as valuable corporate assets for businesses. The defendant had registered a domain name, www.radiff.com that was pretty darn similar to the plaintiff's well-established rediff.com brand. The court ruled that domain names deserve protection just like trademarks, as they represent so much more than just an internet address – they're valuable digital properties.

⁵¹GagahSatria Utama, "Online Dispute Resolution: A Revolution in Modern Law Practice", 3 *BUS. L. REV.* 1, 2-6 (2015)

⁵²Adel Chandra, "Penyelesaian Sengketa Transaksi Elektronik Melalui Online Dispute Resolution (ODR) Kaitan Dengan UU Informasi dan Transaksi Elektronik No.11 Tahun 2008, 10 *JURNAL ILMU KOMPUTER* 80, 82-89 (2014)

⁵³World Intellectual Property Organization, *Final Report of the WIPO Arbitration and Mediation Centre on the Uniform Domain Name Dispute Resolution Policy (UDRP)*, WIPO (2000), available at <<https://www.wipo.int/amc/en/processes/process1/report/finalreport.html>> (last visited Nov. 5, 2024)

⁵⁴AIR 2000 Bom 27

Fast forward to more recent times, and we see the Delhi High Court tackling a cybersquatting case just in 2018 involving Mr. Aroon Purie who was the Group chairman of India Today at that point in time. This individual had registered the domain name aroonpurie.com and was not only using Purie's image on the website, but was also trying to sell the domain at a premium to the rightful owner. In an interim order, the court stepped in to put a stop to the cyber-squatter from commercially exploiting the domain name any further. The court made it clear that Purie had prima facie rights over that domain, underscoring just how crucial it is to protect individuals and businesses from this kind of bad faith domain registration⁵⁵.

These cases really highlight how the Indian judiciary has evolved in its understanding and treatment of domain names as assets worthy of stringent legal protection, especially against the menace of cybersquatting. The courts have consistently sided with legitimate rights holders, sending a strong message that this kind of opportunistic domain grabbing just won't fly.

The 1996 Arbitration & Conciliation Act states that an arbitrator is chosen by the .IN Registry for cases submitted via the INDRP. When a registrant purchases a domain solely to sell it at a sky-high price or to restrict a rightful owner from using it, the arbitrator will often find this as clear evidence of bad faith. The guidelines also address attempts to draw traffic by confusing a complainant's mark with another⁵⁶.

For example, in the 2009 case of *Mohanraj v. Starbucks Corporation*⁵⁷, the complainant's www.starbucks.in and the respondent's www.starbucks.co.in domain names was held to be confusingly similar. The arbitrator determined that the respondent lacked any genuine interest and registered the said domain in bad faith, therefore it was ordered to be transferred over to Starbucks.⁵⁸ Similarly, in the 2010 case of *Bharat Jain vs. Morgan Stanley*⁵⁹, even with the ".co.in" addition, the domain name www.morganstanleybank.co.in was considered confusingly similar to "MORGAN STANLEY" and had to be relocated to the complainant.

⁵⁵India Today, "Delhi HC Says AroonPurie Has Right Over Domain Name aroonpurie.com, Removes Squatter, Warns Seller", *India Today* (June 18, 2018), available at <<https://www.indiatoday.in/india/story/delhi-hc-says-aroon-purie-has-right-over-domain-name-aroonpurie-com-removes-squatter-warns-seller-1263363-2018-06-18>> (last visited Nov. 6, 2024)

⁵⁶Rana Lucy, Shrivastava Rishu; "Balancing the odds: An evaluation of the .IN domain name dispute resolution policy", *World Intellectual Policy Review* (November/December 2011)

⁵⁷*Mohanraj v. Starbucks Corporation*, INDRP/118.

⁵⁸S. S. Rana & Associates, *Domain Name Case Law in India*, S. S. Rana & Associates, available at <<http://www.ssrana.in/Intellectual%20Property/Domain%20Names/Domain-Name-Case-Law-in-India.aspx>> (last visited Nov. 3, 2024).

⁵⁹INDRP/156

In another case, *GOOGLE Inc. v. Gulshan Khatri*⁶⁰ in 2011, Google disputed the registration of a comparable domain that the respondent was using for similar services. The arbitrator decided in Google's favour and ordered the domain to be terminated and transferred. This really highlights how the .INDRP platform is playing a key role in preventing cybersquatting and safeguarding trademark rights in India⁶¹.

The success of the UDRP and its reliance on online dispute resolution serves as a super compelling example of how this approach can offer a practical and highly effective framework for tackling IP disputes in our ever-evolving digital landscape. This model demonstrates the real potential for wider adoption of ODR in addressing IP issues across different areas of e-commerce - contributing to a more balanced and accessible system for protecting online IP rights.

VI. Conclusion

The new trend is the resolution of such IP disputes through the adoption of ODR mechanisms. The ODR mechanism of resolving cross-border IP disputes accelerates the resolution process as global commerce and digital platforms are directly involved. Traditional litigation fails due to duration, high cost, and impossibility of synchronization across jurisdictional lines. ODR mechanisms bring an alternative through the application of technology in providing effective dispute resolution. ODR mechanisms, which primarily includes mediation and arbitration with digital facilitation, provide advantages such as crossing borders geographically, delay, and cost. For IP disputes that are internationalized, ODR supports quick resolution suited to modern commerce.

However, adoptions of ODR in IP disputes pose certain challenges, such as the enforceability of outcomes. Even if a framework, such as New York Convention, assists recognition and enforcement of arbitral awards, it does not really talk about new issues, such as interim measures or purely digital-only proceedings, specific to ODR. Accordingly, incorporation of ODR into the international arbitration frameworks is required for this purpose. Procedural fairness must also be ensured in ODR; the virtual character of the process puts requests for quality of participation under the scrutiny of parties' access to technology. Interfaces of ODR systems must therefore be accessible and include other data-protection measures that provide equal treatment to all parties involved.

⁶⁰O.M.P. (COMM) 497/2016.

⁶¹*Dell Inc. v. Sunil Yadav*, INDRP/1028.

Privacy is an important issue, since IP disputes typically concern confidential information. A proper data protection process should hence be established to ensure data protection during the course of the proceedings. Data policies have to be clearly defined. Cybersecurity standards must also be put into place. Certification standards and training programs ensure the neutrality and competence of mediators and arbitrators in ODR, which builds up trust in the processes. Publicizing awareness of ODR mechanisms can help in wide acceptance. Business and legal professional education schemes can improve understanding of ODR processes. The private sector players will be encouraged through the government's use of ODR in IP disputes.

In conclusion, although ODR for IP disputes is still faced with enforcement, fairness, and data protection, it remains open to a more efficient and more cost-effective resolution of dispute. As this can be developed through innovation and legal reform in educating people of its use and its construction in electronic commerce law.