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Utah, ODR, and the New “Millennial”um¹

I. INTRODUCTION

Courts have used various forms of alternative dispute resolution (“ADR”) for years,² but only a small number are beginning to experiment with online dispute resolution (“ODR”). ADR “refers to any means of settling disputes outside of the courtroom” and can include “negotiation, conciliation, mediation, and arbitration;”³ ODR, as related to courts, “is a public facing digital space in which parties can convene to resolve their dispute or case.”⁴ ODR is already used successfully in many commercial transactions.⁵

Utah is one of the relatively few jurisdictions that has started implementing ODR in its courts.⁶ The State ventured into the court-related ODR realm with a pilot program for just one category of cases in just one city.⁷ Utah is also in the midst of explosive technological growth, as evidenced by the constantly changing “Silicon Slopes,” especially near I-15 in Lehi.⁸ Tech-savvy companies like Adobe, Qualtrics, and Vivint are searching for—and attractive to—tech-savvy individuals. Many of these individuals will undoubtedly come from the “millennial” generation, which has grown

1. Though sources disagree on the precise years involved, in this Note, a “millennial” refers to a person “born in the 1980s or 1990s.” *Millennial*, MERRIAM-WEBSTER: DICTIONARY, <https://www.merriam-webster.com/dictionary/millennial> (last visited Mar. 10, 2021).

2. See, e.g., *Alternative Dispute Resolution Now an Established Practice in Federal Courts*, U.S. CTS.: JUDICIARY NEWS (June 25, 2012), <https://www.uscourts.gov/news/2012/06/25/alternative-dispute-resolution-now-established-practice-federal-courts>.

3. *Alternative Dispute Resolution*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/alternative_dispute_resolution (last visited Mar. 10, 2021).

4. *Online Dispute Resolution*, NAT’L CTR. FOR ST. CTS., <https://www.ncsc.org/odr/guidance-and-tools> (last visited Mar. 10, 2021).

5. eBay, for example, offers \$15 ODR for disputes between sellers and buyers in a process that usually lasts ten days. *Dispute Resolution Overview*, EBAY, <https://pages.ebay.com/services/buyandsell/disputeres.html> (last visited Mar. 10, 2021); see also Louis F. Del Duca, Colin Rule & Kathryn Rimpfel, *eBay’s De Facto Low Value High Volume Resolution Process: Lessons and Best Practices for ODR Systems Designers*, 6 Y.B. ON ARB. & MEDIATION 204, 205 (2014) (estimating that eBay’s Resolution Center handles more than sixty million e-commerce disputes per year).

6. Elle Thomas, *From the Courtroom to Your Room, Utah Court System Pilot Program Brings Small Claims Cases Online*, FOX 13 SALT LAKE CITY (Oct. 25, 2018, 5:30 PM), <https://fox13now.com/2018/10/25/from-the-courtroom-to-your-room-utah-court-system-pilot-program-brings-small-claims-cases-online/>.

7. *Id.*

8. See Brett Derricott, *Come Thrive in the Silicon Slopes*, UTAH BUS. (Mar. 21, 2019), <https://www.utahbusiness.com/tech-silicon-slopes/>.

up in a world that is increasingly more reliant on technology and is “retiring” outdated technology at a rapid pace.⁹ With this new ODR program, Utah has an opportunity to not only increase access to justice for all its citizens and improve judicial efficiency and economy but to make the courts more user friendly and approachable, especially to millennials who already make up close to a quarter of the State’s population.¹⁰

This Note examines Utah’s entry into the world of court-related ODR and then makes suggestions on how Utah can improve upon this ODR in ways that will make the system more accessible to the public, particularly to millennials. Part II provides background information about millennials. This information will demonstrate millennials’ comfort with and expectations of technology. There will also be some discussion about how millennials view justice and government. Part III provides background demographic information about Utah, as well as a brief introduction to the State’s booming technology market. Part IV reviews how multiple jurisdictions from around the world have implemented court-related ODR. This analysis will serve as the main source of suggestions for how Utah can improve upon its own court ODR system. Part V reviews Utah’s small claims ODR system, which includes analysis of the Utah ODR Steering Committee’s recommendations for the new system, insights from Justice Deno Himonas, as well as observations gleaned from navigating the official Utah Courts website. Part VI recommends ways that Utah can improve upon its court-related ODR system. Finally, Part VII provides a brief conclusion.

II. A FEW WORDS ABOUT MILLENNIALS

Popular media often portrays millennials as young, egotistical, and lazy. But what are millennials really like? While some millennials might be considered young in their early twenties, others are quickly approaching their forties.¹¹ This approximately twenty-year age range contemplates

9. The author of this Note has used records, eight-track cartridges, and cassette tapes; his youngest child has never used any of these items and has probably never seen or heard of eight-track cartridges.

10. Natalie Gochnour, *Utah Has More Millennials than Any Other State*, UTAH BUS. (Aug. 27, 2019), <https://www.utahbusiness.com/millennials-utah/> (noting that with twenty-three percent of the population as millennials, Utah has the highest percentage of millennials in the country).

11. See MERRIAM-WEBSTER: DICTIONARY, *supra* note 1.

multiple lifestyles, financial situations, educational levels, living situations, and family dynamics.¹² In general, as compared to previous generations, millennials in the United States are better educated, provide more ethnic and racial diversity in society, and are slower to get married or form households.¹³ Millennials also make up the largest generation of U.S. voters, overtaking baby boomers “as the largest living adult generation” in mid-2019.¹⁴ Additionally, millennials constitute at least twenty-five percent of the U.S. workforce.¹⁵

Millennials have grown up in a time of rapid technological innovation as well as financial instability. This generation has seen the creation and near-universal reach of Facebook, Twitter, and other social media outlets. It has witnessed the birth and development of the iPhone, the Apple Watch, and countless other wearable technologies and mobile communication devices. Millennials live in a world where they can get things quickly and on demand, such as online purchases¹⁶ and insurance.¹⁷ Eighty-five percent of U.S. millennials use their phones to access the internet, and “at least eight in 10 report using [the Internet] to manage their finances, pay bills, shop online, and watch or listen to online content in the past 30 days.”¹⁸ Economically, millennials have lived through the burst of

12. See GLOBALWEBINDEX, AUDIENCE REPORT 2019: MILLENNIALS: EXAMINING THE ATTITUDES AND DIGITAL BEHAVIORS OF INTERNET USERS AGED 23–36, at 3 (2019), <https://www.globalwebindex.com/reports/millennials>.

13. Kristen Bialik & Richard Fry, *Millennial Life: How Young Adulthood Today Compares with Prior Generations*, PEW RES. CTR. (May 14, 2020), <https://www.pewsocialtrends.org/essay/millennial-life-how-young-adulthood-today-compares-with-prior-generations/>.

14. *Id.*

15. PRICEWATERHOUSECOOPERS, MILLENNIALS AT WORK: RESHAPING THE WORKPLACE 3 (2011), <https://www.pwc.com/co/es/publicaciones/assets/millennials-at-work.pdf>.

16. Amazon Prime users in the United States can get millions of items shipped to them in as little as two hours or within a few days. AMAZON PRIME, <https://www.amazon.com/amazonprime> (last visited Mar. 10, 2021).

17. For example, some automobile insurance customers can do the following online: purchase a policy, make policy changes, make payments, print insurance cards, and start a claim. See, e.g., ESURANCE, <https://www.esurance.com/> (last visited Mar. 10, 2021). The author of this Note worked in the insurance industry for fifteen years and assisted clients in doing many of these activities; he also witnessed the way technology transformed the insurance industry.

18. GALLUP, HOW MILLENNIALS WANT TO WORK AND LIVE 74 (2016), <https://www.gallup.com/workplace/238073/millennials-work-live.aspx>.

the U.S. housing bubble,¹⁹ the Great Recession of 2008,²⁰ and now the financial chaos caused by the global coronavirus pandemic. Considering that millennials now account for more than a quarter of all U.S. consumer per-person daily spending,²¹ courts may very well see large numbers of millennials in the courtroom, especially as related to commercial transactions, contractual disputes, and other small-claims type matters.

With the ability to vastly influence elections, the workplace, and the economy, millennials should not be overlooked or forgotten when considering changes to judicial systems. Insight into how millennials view communication, collaboration, justice, government, and conflict can be helpful for those crafting court ODR systems. In terms of communication, many millennials prefer communicating via text or email rather than face to face.²² In terms of collaboration (at least in the workplace), millennials expect frequent feedback from superiors, desire open and abundant communication, and work comfortably in teams.²³ Also, with respect to the workplace setting, millennials want coaches, not bosses—someone who can “help them understand and build their strengths,” not someone who will “command and control” them.²⁴ In terms of justice and government, 74% of millennials in one survey said they “sometimes or never trust the federal government to do the right thing,” 63% view the president similarly, and 58% say “they only sometimes or never trust” the Supreme Court to do what’s right.²⁵ Millennials also seem to be leery of Congress

19. The author of this Note purchased a condominium in Nevada in November 2006 and subsequently watched as the value of the home decreased by close to \$200,000 from the purchase price. Fortunately, the housing market rebounded somewhat after the housing bubble burst, but the value of the condo still did not return to the original purchase value.

20. Shawna Benston & Brian Farkas, *Mediation and Millennials: A Dispute Resolution Mechanism to Match a New Generation*, 2 J. EXPERIENTIAL LEARNING 166, 169 (2018) (noting that millennials also witnessed the dot-com rise and fall, as well as the 9/11 terrorist attacks and resulting consequences).

21. GALLUP, *supra* note 18, at 111 (predicting that this number is expected to rise to more than a third of all daily consumer per-person spending by 2031).

22. See Tom Gimbel, *How to Help Millennials and Baby Boomers Get Along*, FORTUNE (Apr. 1, 2017, 10:00 AM), <https://fortune.com/2017/04/01/leadership-career-advice-millennials-conflict-feud-mentorship/>; PRICEWATERHOUSECOOPERS, *supra* note 15, at 4 (reporting that approximately forty percent of those surveyed would prefer to communicate electronically while at work, rather than by telephone or face to face). Interestingly, one tech CEO from India notes that with millennials in the workplace, “people management strategies will have to change so that they look more like Facebook and less like the [hierarchical] pyramid structures we are used to.” *Id.* at 23.

23. Karen K. Myers & Kamyab Sadaghiani, *Millennials in the Workplace: A Communication Perspective on Millennials’ Organizational Relationships and Performance*, 25 J. BUS. PSYCH. 225, 229–30 (2010).

24. GALLUP, *supra* note 18, at 3.

25. Chris Cillizza, *Millennials Don’t Trust Anyone. That’s a Big Deal.*, WASH. POST (Apr. 30, 2015, 9:00 AM), <https://www.washingtonpost.com/news/the-fix/wp/2015/04/30/millennials-dont->

(83% distrust), and about half have little to no confidence in the U.S. justice system, though this number varies depending on race.²⁶ In terms of conflict and dispute resolution, some experts suggest that because of millennials’ comfort with using technology, the generation may lack some social skills, which can add to discomfort with conflict and personal interaction in the workplace.²⁷

Due to experiences with financial uncertainty, staggering amounts of student debt, and depressed employment rates, millennials may be particularly receptive to mediation because it gives them control over outcomes involving financial situations, reduces exposure, and removes the frightening proposition “of an ‘all or nothing’ resolution in front of a judge.”²⁸ Millennials may also be more open to ADR and mediation than prior generations, specifically because they have grown up in a world increasingly exposed to diverse viewpoints because of “the ability to connect to almost anyone, anywhere, at any time.”²⁹ Because millennials have been exposed to and are comfortable with such differences, mediation may be an appealing form of conflict resolution because of its tendency to be successful when parties highlight common interests and are willing “to move past surface-level differences.”³⁰ However, any generalizations about the more than seventy million U.S. millennials are just generalizations: it is impossible to say that “every millennial from every background will prefer mediation for every dispute.”³¹

III. A BRIEF WORD ABOUT UTAH

Several aspects of Utah are worth considering in light of the discussion about millennials in Part II and the State’s commencement of ODR in

trust-anyone-what-else-is-new/ (citing a poll by Harvard University’s Institute of Politics). To be fair, millennials appear to be part of a larger societal trend to distrust public institutions. *Id.* (citing an annual Gallup national survey from 2014).

26. Caleb Diehl, *Harvard Poll Finds Millennials Have Little Faith in Government, Media*, USA TODAY (Apr. 29, 2015, 1:02 PM), <https://www.usatoday.com/story/college/2015/04/29/harvard-poll-finds-millennials-have-little-faith-in-government-media/37402403/> (citing the same Harvard University Institute of Politics poll referenced by Cillizza, *supra* note 25).

27. See Rex Huppke, *Millennials Struggle with Confrontation at Work*, CHI. TRIB. (Nov. 19, 2012), <https://www.chicagotribune.com/business/ct-xpm-2012-11-19-ct-biz-1119-work-advice-huppke-20121119-story.html> (citing both a psychologist and an associate professor). Though the article refers to the workplace, it is not a stretch of the imagination to see that those who rely heavily on technology to communicate may lack social skills, which could add to discomfort with conflict and personal interaction in other settings, such as court.

28. Benston & Farkas, *supra* note 20, at 169–71.

29. *Id.* at 174.

30. *Id.*

31. *Id.* at 177 (emphasis omitted).

some of its courts. Utah's population is the youngest in the country, in large part because of the number of minors in the State, but also in part due to an increase in the working-age population.³² The median age in the State is thirty-one.³³ Those residents age twenty to thirty-nine, more or less those considered to be millennials, make up close to a third of the State's population.³⁴ Since 2010, the State's population has grown by approximately four-hundred thousand people.³⁵

Of Utah residents twenty-five years old or older, approximately 92% are high school graduates, and close to a third have at least a bachelor's degree.³⁶ Approximately 95% of Utah households have a computer and 87% of households have a broadband internet subscription.³⁷ Utah is also home to the "Silicon Slopes," a concentration of IT, software, hardware, and research firms located between Salt Lake City and Provo, including places like Park City.³⁸ Salt Lake City, the State's capital, for example, has seen changes in the city's downtown population as younger (median age thirty-two), more tech-savvy workers have moved in.³⁹ The State has taken advantage of the population's tech-savviness and access to the internet by offering over 1,000 online services to Utah residents, saving the State, and thus taxpayers, tens of millions of dollars.⁴⁰

32. KEM C. GARDNER POL'Y INST., U.S. CENSUS BUREAU ESTIMATES FOR AGE, VINTAGE 2018, at 1 (2019), <https://gardner.utah.edu/wp-content/uploads/2018AgeEstimatesFactSheetFinal.pdf> (citing U.S. Census Bureau estimates). Utah County (median age 24.9 years) and Cache County (median age 25.3 years) are two of the top ten youngest counties in the country. *Id.* The youthfulness in these two counties is likely attributable in part to the colleges and universities in those counties, and the subsequently large number of students that attend those institutions: some of these institutions include Brigham Young University and Utah Valley University in Utah County, and Utah State University in Cache County.

33. *Id.*

34. KEM C. GARDNER POL'Y INST., UTAH STATE AND COUNTY ANNUAL POPULATION ESTIMATES BY SINGLE YEAR OF AGE AND SEX: 2010–2018 (2019), <https://gardner.utah.edu/wp-content/uploads/Utah-Popest-CountySYAS-May2019.pdf>.

35. *Id.*

36. *Quick Facts: Utah*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/UT> (last updated July 1, 2019).

37. *Id.*

38. *Silicon Slopes*, WIKIPEDIA, https://en.wikipedia.org/wiki/Silicon_Slopes (last visited Mar. 13, 2021).

39. Tony Semerad, *Downtown Salt Lake City is Increasingly a Hub for Young, Tech-Savvy Workers who Live and Play Among the Skyscrapers*, SALT LAKE TRIB., <https://www.sltrib.com/news/2019/08/21/downtown-salt-lake-city/> (Aug. 22, 2019, 12:32 PM).

40. Jasen Lee, *'Tech-Savvy' Utah Saving Tens of Millions with Online Services*, KSL (Oct. 14, 2012, 1:26 PM), <https://www.ksl.com/article/22531683/tech-savvy-utah-saving-tens-of-millions-with-online-services> (citing a study by the University of Utah).

IV. COURT-RELATED ODR IN JURISDICTIONS OUTSIDE OF UTAH⁴¹

Navigating court systems can be very difficult, especially for those without the assistance of effective legal counsel. In 2013, 76% of all civil cases included at least one unrepresented side.⁴² Serious consequences are on the line in civil cases, including disputes about property, divorce, adoption, contracts, and torts. Many times, litigants do not even attempt to defend themselves due to lack of knowledge, lack of resources, or lack of hope.⁴³ Judicial leaders recognize these issues, as demonstrated by “the Conference of Chief Justices and the Conference of State Court Administrators issu[ing] a joint resolution calling for everyone to have access to effective assistance for their essential civil legal needs.”⁴⁴

One way that courts are attempting to address such challenges is through ODR.⁴⁵ In theory, ODR can help individuals to understand their legal rights, provide evidence, negotiate, mediate, and take other procedural steps in the court process with “a computer or mobile device . . . without ever going to a courthouse.”⁴⁶ As court-related ODR is still new, special care must be taken to ensure that the system is not abused and that it meets its goals, such as increasing access to justice or improving judicial efficiency.⁴⁷ Courts must remember that a portion of society (although a decreasing one) still cannot access the internet, which could hurt some who live in jurisdictions with mandatory ODR.⁴⁸ A recent survey shows

41. This Note does not attempt to analyze or provide up-to-date information on all jurisdictions using some form of ODR. Court-related ODR is relatively new and is constantly changing. New courts continue to enter this arena; courts currently using ODR are constantly updating and modifying existing processes. Nor does this Note claim to analyze courts or theories and ideas that have not previously been analyzed. As evidenced by the sources used in this Note, many experts and commentators have previously reviewed many of the same courts and concepts discussed herein. Rather, this Note attempts to briefly analyze several jurisdictions’ ODR processes and then suggest aspects of those systems that may help Utah improve its own court ODR process, with special consideration given to the large number of millennials in the State.

42. Susan K. Urahn, *The Modernization Our Civil Legal System Needs*, PEW (Nov. 6, 2018), <https://www.pewtrusts.org/en/about/news-room/opinion/2018/11/06/the-modernization-our-civil-legal-system-needs>.

43. *Id.*

44. *Id.*

45. *Id.* (noting that “Utah and at least 15 other states” have begun exploration of court-related ODR). As this Note will demonstrate, some states, including Utah, are only experimenting in certain areas and courts rather than on a statewide level.

46. *Id.*

47. *See id.*

48. *See Online Dispute Resolution Can Make Local Courts More Efficient*, PEW (June 4, 2019), <https://www.pewtrusts.org/en/research-and-analysis/articles/2019/06/04/online-dispute-resolution-can-make-local-courts-more-efficient> (featuring a conversation with Professor J.J. Prescott,

that a majority polled felt that being in court would make proceedings easier to understand, be better for unrepresented parties, and would be more fair, as compared to ODR.⁴⁹ Some fear that ODR will replace jobs, will cost too much, or that its technology will be misused.⁵⁰

In spite of these and other valid concerns, ODR in courts should be analyzed carefully because it has the potential to allow individuals to transcend barriers like time, money, location, and power differentials.⁵¹ In an attempt to transcend such barriers, some suggest that courts should “rebuild the justice system as a reflection of everyday people,” which would include starting by focusing on those who might have impediments to using the current, traditional court system.⁵² The rest of Part IV will provide brief overviews of how different courts are implementing ODR while trying to focus on key goals such as improving access to justice and improving judicial efficiency.

A. *British Columbia*

In many respects, Shannon Salter and the Civil Resolution Tribunal (“CRT”) of British Columbia, which she chairs, are pioneers in the realm of court-related ODR. The CRT is the first instance of ODR that was “integrated into the public justice system” in Canada and, by all appearances, in the world as well.⁵³ Salter has been a visible, consistent, and regular public advocate for effectively using ODR, both in Canada and internationally.⁵⁴ She is quick to point out that “ODR by itself [does not] increase access to justice” and that “design decisions [can] render ODR useless

University of Michigan Law School; Prescott is the head researcher for the school’s Online Court Project).

49. Erika Rickard & Amber Ivey, *Public Sees Benefits to Resolving Civil Court Cases Online*, PEW (Mar. 18, 2019), <https://www.pewtrusts.org/en/research-and-analysis/articles/2019/03/18/public-sees-benefits-to-resolving-civil-court-cases-online> (citing a National Center for State Courts survey).

50. Amy J. Schmitz, *Expanding Access to Remedies through E-Court Initiatives*, 67 *BUFF. L. REV.* 89, 94 (2019).

51. *See id.* at 90–93 (noting benefits to public institutions in efficiency, time, and money).

52. Shannon Salter, *Sir Brian Neill Lecture: Can Online Dispute Resolution Humanize the Justice System?*, YOUTUBE, at 11:23 (Aug. 21, 2019), <https://www.youtube.com/watch?v=1oWhmTNR5z8> (discussing that such impediments include mental and physical disabilities, low income, and language barriers). Shannon Salter is one of the pioneers of court-related ODR. The Civil Resolution Tribunal in British Columbia, which Salter chairs, is discussed in the next section of this Note.

53. Courthouse Librs. BC, *Civil Resolution Tribunal: New Areas of Jurisdiction - Webinar Recording*, VIMEO, at 2:45 (Oct. 31, 2018) [hereinafter *New Areas of Jurisdiction*], <https://vimeo.com/showcase/5668654/video/298212020>.

54. *See, e.g.*, Salter, *supra* note 52. This speech, given in England, is just one of many ODR-related messages that Salter has delivered in various locations.

from any access to justice perspective.”⁵⁵ Originally authorized by statute⁵⁶ as an administrative tribunal⁵⁷ with jurisdiction over condominium disputes (2016), the CRT has experienced rapid and expansive growth and now has jurisdiction over certain small claims disputes (2017), some motor vehicle accident disputes (2019), and disputes related to some societies, non-profits, and cooperative associations (2019).⁵⁸ The CRT aims “to build the justice system around the public,” and has as key guiding principles timeliness, flexibility, accessibility, affordability, and efficiency.⁵⁹

The CRT website does not look like a traditional public judicial system website: there are scrolling banners with text that highlight the benefits of using the system, several pictures, and multiple icons that briefly explain the steps that CRT users will take during the process.⁶⁰ Among the various types of multimedia presentations found on the website, there are videos with animations and graphics that help demonstrate how certain features of the system work.⁶¹ The CRT process begins with the free “Explore and Apply” step that includes the “Solution Explorer” (which uses answers to questions to provide legal information and tools, classify disputes, and provide appropriate online forms), detailed information about the types of claims the CRT handles, and information about limitation periods for making claims.⁶² Once a CRT application is accepted, participants enter the “Negotiation” phase. This phase provides a text-message-like platform for parties to try and work out a solution, helps parties that

55. Shannon Salter, *Address at Access to Justice and Technology Summit*, YOUTUBE, at 55:40 (July 2, 2019), <https://www.youtube.com/watch?v=1YWMgpueDIM&list=PLCcQWZN2g5voDDJyGpwwKTMpEXZItW5O&index=5> (explaining in a question and answer session following the address that design decisions, for example, could focus on university-level knowledge or reading skills and thus eliminate access to justice for less-educated segments of the public).

56. Civil Resolution Tribunal Act, S.B.C. 2012, c 25 (Can.).

57. Salter, *supra* note 55, at 1:50. The CRT, which is an administrative tribunal and part of the justice system in British Columbia, is similar to an administrative court in the United States (but not to a state or federal district court in the U.S.). *Id.*

58. *Id.* at 6:50. For example, the CRT has jurisdiction over small claims valued at \$5,000 CAD (approximately \$3,850 USD) or less. *Id.*

59. See *New Areas of Jurisdiction*, *supra* note 53, at 10:37.

60. *Welcome to the Civil Resolution Tribunal*, CIV. RESOL. TRIBUNAL, <https://civilresolutionbc.ca/> (last visited Mar. 13, 2021). Salter points out that many design features of the website intentionally look like social media: as one example, the negotiation platform looks similar to Facebook Messenger because people have less problems using legal technology when it looks like technology that they are used to. Salter, *supra* note 55, at 11:50.

61. *Explore and Apply*, CIV. RESOL. TRIBUNAL, <https://civilresolutionbc.ca/how-the-crt-works/getting-started/> (last visited Mar. 13, 2021) (scroll to the bottom of the page for a video about the Solution Explorer).

62. *Id.* The CRT website has a large number of resources and areas to click on and learn more about; this Note provides only a brief overview of the CRT process.

reach an agreement to create an order that will be enforceable by the CRT, offers tips for successful negotiations, and establishes criteria aimed at avoiding abusive behavior.⁶³ If an agreement is not reached during the “Negotiation” phase, a neutral facilitator, who is a dispute resolution expert, can enter the chat platform, allow parties to submit and exchange information online, and try to help them reach an agreement.⁶⁴ If the parties still cannot reach an agreement with the help of a facilitator, an independent CRT member can make a binding decision, which is usually done online, but is sometimes done via telephone or video.⁶⁵

Every month the CRT publishes statistics and results from user satisfaction surveys in an effort to be transparent and in order to help make the CRT more user-centered and available to the public.⁶⁶ CRT statistics for September 2019 show that close to 90,000 people have used the Solutions Explorer, and over 11,000 disputes have been completed, with close to 2000 of those disputes resolved by a CRT adjudication.⁶⁷ User satisfaction statistics include anonymous feedback from those who have experienced the tribunal process.⁶⁸ The CRT reported that fifty-nine users responded to the satisfaction survey in September 2019, and cumulative results include the following: 76% of users felt that their dispute was managed in a timely manner, 69% felt that the process was easily understandable, 69% felt that the system was easy to use, 85% felt that they were treated fairly by the CRT, and 84% percent would recommend the process to others.⁶⁹ While Salter would likely be the first to say that there is much to improve upon, the CRT appears to be headed in a positive direction while maintaining a public-oriented approach.

63. *Negotiation*, CIV. RESOL. TRIBUNAL, <https://civilresolutionbc.ca/tribunal-process/negotiation/> (last visited Mar. 13, 2021). Some abusive behavior can even lead to dismissal of a dispute. *Id.*

64. *Facilitation*, CIV. RESOL. TRIBUNAL, <https://civilresolutionbc.ca/tribunal-process/facilitation/> (last visited Mar. 13, 2021).

65. *Get a CRT Decision*, CIV. RESOL. TRIBUNAL, <https://civilresolutionbc.ca/tribunal-process/tribunal-decision-process/> (last visited Mar. 13, 2021). CRT users are welcome to seek the assistance of lawyers or support people, and decisions can be appealed. *Id.* The CRT website provides details about how and when both situations apply. *Id.*

66. *See Blog*, CIV. RESOL. TRIBUNAL, <https://civilresolutionbc.ca/blog/> (last visited Mar. 13, 2021); *see also New Areas of Jurisdiction*, *supra* note 53, at 21:05. CRT “decisions are published almost instantaneously.” *New Areas of Jurisdiction*, *supra* note 53, at 26:50.

67. *CRT Statistics Snapshot – September 2019*, CIV. RESOL. TRIBUNAL (Oct. 7, 2019), <https://civilresolutionbc.ca/crt-statistics-snapshot-september-2019/>. The author of this Note believes, but is not certain, that the statistics presented are the cumulation of all user statistics from the start of the CRT to September 2019.

68. *Participant Satisfaction Survey – September 2019*, CIV. RESOL. TRIBUNAL (Oct. 2, 2019), <https://civilresolutionbc.ca/participant-satisfaction-survey-september-2019/>.

69. *Id.*

B. Franklin County, Ohio

Similar to how the CRT was the first version of court-related ODR in Canada, Franklin County, Ohio, appears to be the first to use court ODR in the U.S.⁷⁰ The program, which started in October 2016, uses a form of software developed by Court Innovations, a company that specializes in court-specific ODR software.⁷¹ Alex Sanchez, the Small Claims Manager for Franklin County, explains that court users have Netflix-type expectations of the judicial system, including on-demand service, accessibility, and online solutions.⁷² Franklin County describes ODR as “an easy and flexible way to resolve a dispute in a way that works for everyone.”⁷³ The process is currently available for small claims of up to \$6,000.⁷⁴

Franklin County’s ODR homepage does not have as many graphics and features as the CRT website, but it does contain a short video that provides a brief overview of the process and its potential benefits.⁷⁵ One particularly useful aspect of Franklin County’s ODR website is the “Help Center.”⁷⁶ The “Help Center” contains six short videos about the small claims process as well as answers to fifteen frequently asked questions.⁷⁷ The frequently asked questions cover topics such as how the ODR process works, the benefits of ODR, payment options, how to prepare for ODR, and how to get help during the process.⁷⁸ Parties are able to use the system when notified by the court of the ability to do so; once the parties receive access to the system, they can begin a “conversation” with each other to

70. Dunrie Greiling, *Franklin County Municipal Court Assists More than 1,000 Individuals and Businesses via Online Dispute Resolution*, MATTERHORN (Mar. 28, 2019), <https://getmatterhorn.com/franklin-county-municipal-court-assists-more-than-1000-individuals-and-businesses-via-online-dispute-resolution/>.

71. Giuseppe Leone, *Small Claims Courts 2.0 – Online Dispute Resolution in Action at Franklin County Municipal Court*, MEDIATE.COM (Mar. 2018), <https://www.mediate.com/articles/leoneg7.cfm>.

72. *Online Dispute Resolution: Resources Saved, Justice Served*, VIRTUAL MEDIATION LAB (Jan. 18, 2018) [hereinafter *Resources Saved, Justice Served*], <https://www.virtualmediationlab.com/wp-content/uploads/2018/01/presentation180118.pdf>. The link is to the slides from the webinar; the actual webinar recording is accessible at https://www.youtube.com/watch?v=pp_Wi0e23k8.

73. *A Letter from the Franklin County Municipal Court*, ONLINE DISP. RESOL. FRANKLIN CNTY. MUN. CT. (Oct. 1, 2016), <https://sc.courtinnovations.com/OHFCMC>.

74. *Help Center*, ONLINE DISP. RESOL. FRANKLIN CNTY. MUN. CT., <https://sc.courtinnovations.com/OHFCMC/help> [hereinafter *Help Center*] (last visited Mar. 13, 2021).

75. *Welcome!*, ONLINE DISP. RESOL. FRANKLIN CNTY. MUN. CT., <https://sc.courtinnovations.com/OHFCMC> (last visited Mar. 13, 2021). The video can also be accessed at <https://www.youtube.com/watch?v=e-meKffVQ2I>.

76. *Help Center*, *supra* note 74.

77. *Id.*

78. *Id.*

try and come to an agreement.⁷⁹ If parties are not able to reach a resolution on their own, they can call a mediator for assistance.⁸⁰ If parties are not able to reach an agreement themselves or with the help of a mediator, parties can still pursue resolution through traditional legal means.⁸¹ Franklin County's ODR is free, has no time limits, and can be terminated at any time.⁸²

From October 2016 to March 2019, "well over 1,000 people have used the platform to resolve over 1,000 cases online."⁸³ In the nine months before Franklin County instituted ODR for small claims, there was a 54% default judgment rate and 33% dismissal rate. Initial ODR results show that only 20% of cases ended with a default judgment and 60% of cases were dismissed.⁸⁴ 93% of those initial ODR users reached an agreement during the negotiation stage.⁸⁵ It appears that the ease and flexibility that Franklin County desires to provide the public via court ODR is having a positive impact on the resolution of small claims.

C. Michigan

1. Multi-county initiatives⁸⁶

Described as "groundbreaking," Michigan's version of court ODR, MI-Resolve, launched in August 2019 as a way to "help[] residents resolve disputes without going to court."⁸⁷ MI-Resolve is for small claims, neighborhood disputes, contract disputes, and landlord-tenant issues.⁸⁸ There is currently no fee to use the system and users need not have a court case

79. *Id.* at "How does Online Dispute Resolution work?" Notice the court's intentional choice to label the interaction between parties as a "conversation." This may be an attempt to ease parties' tensions and help the negotiation process start more smoothly.

80. *Id.* at "What if resolving the issue online is just not working?"

81. *Id.*

82. *Resources Saved, Justice Served, supra* note 72.

83. Greiling, *supra* note 70.

84. *Resources Saved, Justice Served, supra* note 72. Though not specified, the initial ODR results may cover the time period from October 2016 to January 2018. The webinar where this data was presented took place in January 2018. *Id.*

85. *Id.*

86. Michigan's court-related ODR for small claims is currently available in only seventeen counties but it is expected to be available statewide soon. John Nevin, *Michigan Supreme Court Announces Groundbreaking MI-Resolve Online Mediation Program*, MICH. CTS. NEWS RELEASE (Aug. 7, 2019), https://courts.michigan.gov/News-Events/press_releases/Documents/Statewide%20Media%20Release%20ODR.pdf.

87. *Id.*

88. *Id.*

filed before using the system.⁸⁹ The ODR system is one way that Michigan is attempting to increase access to justice and “is a game changer because people who are busy with work or children can benefit from mediation on their own schedule.”⁹⁰

MI-Resolve’s homepage, while certainly not flashy, provides useful information: who is eligible to use the service, how a mediator can help parties to resolve their dispute, and in what situations the ODR system is most beneficial.⁹¹ The “Frequently Asked Questions” page of the website provides answers to more than a dozen questions, on topics such as how the system works, the role of a mediator, how to prepare to use the system, and guidance on how to find free legal information.⁹² Once parties enter the system, they can work towards a resolution in the “Conversations Space” by themselves, or they can ask a mediator to join the process.⁹³ Parties that cannot reach an agreement “are free to pursue their other legal options.”⁹⁴ Because MI-Resolve was released fairly recently, there do not appear to be any publicly available statistics to provide any indication on how the system is functioning or whether the system is increasing access to justice for Michigan residents.

2. Washtenaw County

Washtenaw County, Michigan, currently allows some individuals to use the internet for four traffic-related situations: to pay for tickets and case fees, to make misdemeanor pleas, to request that charges be lowered or dropped, and to resolve certain outstanding warrants.⁹⁵ The 14A District Court of Washtenaw County began offering ODR options in July 2017 as

89. *Id.*

90. *Id.* Michigan Supreme Court Chief Justice Bridget M. McCormack explained that “[m]aking court services more accessible means opening both real and virtual courtroom doors.” *Id.*

91. MI-RESOLVE, <https://cii2.courtinnovations.com/MICMS> (last visited Mar. 13, 2021). One potential benefit of using the home page to provide both eligibility information and situations where ODR is most helpful is to set realistic expectations for potential users before they engage with the system.

92. *Frequently Asked Questions*, MI-RESOLVE, <https://cii2.courtinnovations.com/MICMS/faq> (last visited Mar. 13, 2021).

93. *Id.* at “How does MI-Resolve work?” and “How do I access my conversation space?” The name “Conversation Space” seems to set a more positive, working tone to the process. The “Conversation Space” is confidential and very few people have access to the messages contained therein. *Id.* at “How do I access my conversation space?” Mediators are described as “trained, experienced neutral third part[ies] who will help” parties find solutions to their problems. *Id.* at “Who is the mediator and what role do they play?”

94. *Id.* at “How does MI-Resolve work?”

95. *Online Resources*, 14A DIST. CT. WASHTENAW CNTY. MICH., <https://www.washtenaw.org/973/Online-Resources> (last visited Mar. 13, 2021).

a way to help the public save time and to handle certain legal matters in a convenient manner.⁹⁶ These four traffic-related ODR processes allow users to deal with real judges and real law enforcement officers from the convenience of home, and allow judges and officers to remove or lessen charges because “[e]veryone makes mistakes.”⁹⁷ After receiving a citation, drivers have eight days to submit a request for approval to use online ticket review (or one of the other three traffic-related ODR services).⁹⁸ If approved for the system, users are notified by text or email, and they then have ten days to take action on the matter.⁹⁹ This ODR system is also run by Court Innovations, the same software company that Franklin County, Ohio uses.¹⁰⁰ There do not appear to be any publicly available statistics that would help determine whether this ODR system is achieving its goals of helping the relevant public save time and making certain court-related processes more convenient.

3. *Ottawa County*

In 2016,¹⁰¹ Ottawa County, Michigan, began using ODR to help alleviate problems associated with child support compliance.¹⁰² Ottawa County struggled with effectively enforcing child support orders, resulting in large numbers of orders to show cause.¹⁰³ These struggles often resulted

96. Richard E. Conlin, *About Online Ticket Review*, 14A DIST. CT. WASHTENAW CNTY. MICH. (July 10, 2017), <https://www.courtinnovations.com/MID14A/about>. Richard E. Conlin is Chief Judge of the 14A District Court. *Id.*

97. *Frequently Asked Questions*, 14A DIST. CT. WASHTENAW CNTY. MICH., <https://courtinnovations.com/mid14a/faq> (last visited Mar. 13, 2021). It seems that the court is making a conscious effort to bridge a gap between the public and government officials by stating that “everyone makes mistakes.” *See id.* The court also seems to provide helpful information to the public by explaining that charges “get reported to the Michigan Secretary of State. That information is then available to your insurer.” *See id.* This might be considered helpful because traffic points can cause insurance rates to increase; reducing or eliminating traffic points could result in lower insurance rates for drivers.

98. *Id.*

99. *Id.*

100. *Id.*; *see also* Leone, *supra* note 71.

101. Ottawa County’s rollout of child support-related ODR began in December 2016. Kevin Bowling, Jennell Challa & Di Graski, *Improving Child Support Enforcement Outcomes with Online Dispute Resolution*, in NAT’L CTR. FOR ST. CTS., TRENDS IN STATE COURTS 2019 43–44 (2019), <https://cdm16501.contentdm.oclc.org/digital/collection/famct/id/1559>.

102. *See Family Court – Child Support Compliance*, MATTERHORN, <https://getmatterhorn.com/odr-solutions/civil/family-court/> (last visited Mar. 13, 2021). Ottawa County, Michigan, uses Court Innovations software; Washtenaw County, Michigan, and Franklin County, Ohio, also use ODR software from Court Innovations. *Id.*; *see also* *Frequently Asked Questions*, *supra* note 97; Leone, *supra* note 71.

103. *See Family Court – Child Support Compliance*, *supra* note 102. This information comes from the website’s embedded video, which can be accessed directly at https://www.youtube.com/watch?time_continue=20&v=GKyeI46NDvo.

in large numbers of hearings, which could have been more easily resolved via phone or online.¹⁰⁴ The new system aims to reduce problems, such as backlog for the court and bench warrants, by overcoming communication barriers such as a lack of stable employment, stable housing, or reliable transportation.¹⁰⁵ The ODR system uses text, email, and direct messaging to keep parents informed of hearings, schedule updates, and payment deadlines.¹⁰⁶ The court check-in process is also streamlined by this system, which saves times for both court staff and the public.¹⁰⁷ Early indications show that the court is starting to achieve its goals of facilitating communication, reducing backlog, and reducing warrants: comparing the months of July to November 2018, to the months of July to November 2016 before the system launched, 22% more child support was collected, there were 29% fewer hearings, and there were 35% fewer warrants issued.¹⁰⁸

D. New Mexico

New Mexico first employed court-related ODR on June 3, 2019, when the judiciary used a \$450,000 allotment from the legislature to implement ODR for debt and money-due lawsuits in a limited number of courts across the state.¹⁰⁹ On September 1, 2019 the New Mexico Supreme court expanded the system to all district and magistrate courts in the state.¹¹⁰ On September 2, 2020, the court again expanded the system to include certain landlord-tenant cases.¹¹¹ Residents do not currently have to pay to use the optional system, but the state pays fifteen dollars to the software vendor, Tyler Technologies, for each resolved case.¹¹² The system aims to help people handle these type of lawsuits more quickly and less expensively by using their smart phones and computers “to bring justice into [their] living

104. *Id.*

105. *See id.* This information comes from the website’s embedded video, which can be accessed directly at https://www.youtube.com/watch?time_continue=20&v=GKyeI46NDvo.

106. *Id.*

107. *See id.*

108. *See Family Court Results*, MATTERHORN, <https://getmatterhorn.com/get-results/family-court/> (last visited Mar. 13, 2021).

109. *See Mary Hudetz, New Mexico Courts Push Online Tool for Resolving Debt*, AP NEWS (June 3, 2019), <https://www.apnews.com/ac93e950426547ccad7a63324d91c3dd>.

110. *See Joshua Kellogg, System to Handle Debt Collection Lawsuits Online Expands Statewide*, FARMINGTON DAILY TIMES (Aug. 30, 2019, 5:17 PM), <https://www.daily-times.com/story/news/local/2019/08/30/online-system-handle-debt-collection-lawsuits-expands-statewide-new-mexico-dispute-resolution/2168300001/>.

111. Order in the Matter of the Expansion of the Online Dispute Resolution Pilot Project for New Mexico State Courts, No. 20-8500-036 (N.M. Sept. 2, 2020).

112. *See Hudetz, supra* note 109.

rooms.”¹¹³ The Supreme Court of New Mexico recognized that ODR is a form of ADR that offers “valuable means for promoting the effective administration of justice, expanding access to justice, and improving judicial economy.”¹¹⁴

Though not on par with the CRT website in British Columbia, New Mexico’s ODR home page has a user-friendly feel with graphics, several expandable menus, and a link to a brief video overview of the new process.¹¹⁵ Once a complaint is filed and then served upon a defendant, the defendant can then choose whether or not to participate in ODR.¹¹⁶ The original complainant is emailed a link to questions about the alleged amount of money due.¹¹⁷ The defendant is then emailed a link to the information provided by the complainant and additional questions that provide a response to the complainant.¹¹⁸ During the first two weeks of this process, either party has the option of requesting the assistance of a free, online mediator to help resolve the case.¹¹⁹ If the parties come to an agreement on their own or with the assistance of a mediator, a settlement agreement is automatically prepared and filed with the court; if no agreement is reached, a “non-settlement agreement is automatically filed with the court” and the court will then contact the parties about how their case will proceed.¹²⁰ Parties can also share evidence with each other or the mediator by uploading documents in a files section on the ODR platform.¹²¹ Online

113. See *id.* (quoting Judge Jane Levy, of the Second Judicial Court, Bernalillo County, New Mexico).

114. Order in the Matter of the Approval of an Online Dispute Resolution Pilot Project for New Mexico State Courts, No. 19-8500-009 (N.M. June 3, 2019) [hereinafter *2019 Order*].

115. *What is Online Dispute Resolution (ODR)?*, N.M. CTS., <https://adr.nmcourts.gov/odr.aspx> (last visited Mar. 14, 2021).

116. *Id.*; *Frequently Asked Questions: 3. Is Participation Required?*, N.M. CTS., <https://adr.nmcourts.gov/home/faq/> (last visited Mar. 14, 2021); see also *Resolve Your Case from Your Phone, Tablet or Computer*, N.M. CTS., <https://cms.nmcourts.gov/uploads/files/Modria%20Flowchart%20v1%20for%20Website.pdf> (providing a flow chart that gives a general overview of the ODR process) [hereinafter *ODR Flow Chart*].

117. *What is Online Dispute Resolution (ODR)?: ODR Overview Video*, N.M. CTS., <https://adr.nmcourts.gov/odr.aspx> (last visited Feb. 9, 2021) (video link at the bottom of the page) [hereinafter *ODR Overview Video*]; *ODR Flow Chart*, *supra* note 116. This process takes approximately ten minutes or less. *ODR Flow Chart*, *supra* note 116.

118. *ODR Overview Video*, *supra* note 117. Like the time required for the complainant to provide initial online responses, this process should take the defendant less than ten minutes to complete. *ODR Flow Chart*, *supra* note 116.

119. *ODR Flow Chart*, *supra* note 116; see also *2019 Order*, *supra* note 114 (noting that mediators are to “serve as arms of the court”).

120. *ODR Flow Chart*, *supra* note 116.

121. *Frequently Asked Questions: 10. What if I Have Documents to Show the Other Party?*, N.M. CTS., <https://adr.nmcourts.gov/home/faq/> (last visited Mar. 14, 2021).

mediation normally ends automatically if the parties do not come to a resolution within thirty days.¹²² The “Frequently Asked Questions” section of the ODR website includes information that can be very helpful to parties including how to get a free email account to participate in mandatory ODR, how information is kept confidential, and where to find information about consumer debt, consumer protection, and legal assistance.¹²³

The Supreme Court of New Mexico ordered the state’s Administrative Office of the Courts to “submit an interim written report to the Supreme Court on or before December 30, 2019, that includes an assessment of the effectiveness of the ODR Pilot Project and any recommendations for the continued use of [ODR] services in New Mexico state courts.”¹²⁴ Although no official data seems to be available yet to evaluate whether New Mexico’s court ODR is improving judicial administration and efficiency and expanding access to justice, the fact that ODR for debt collection cases expanded from a limited number of state courts to statewide coverage in less than three months, and then expanded again to include certain landlord-tenant cases, may be evidence that the system is helping to achieve some of those goals.¹²⁵

E. England and Wales¹²⁶

“England and Wales . . . are in the process of taking significant steps towards digitalising [their] court processes and using technology for the benefit of those involved in [the] system across all jurisdictions.”¹²⁷ The

122. *Frequently Asked Questions: 18. What Happens if We Cannot Reach an Agreement Even with the Help of an Online Mediator?*, N.M. CTS., <https://adr.nmcourts.gov/home/faq/> (last visited Mar. 14, 2021); see *2019 Order*, *supra* note 114 (noting that the court can grant an exception to the thirty-day time limit to complete ODR).

123. *Frequently Asked Questions*, N.M. CTS., <https://adr.nmcourts.gov/home/faq/> (last visited Mar. 14, 2021).

124. *2019 Order*, *supra* note 114.

125. See Kellogg, *supra* note 110.

126. Much of the analysis in this section comes from the work of the United Kingdom’s Civil Justice Council’s Online Dispute Resolution Advisory Group. The author of this Note believes that ODR in England and Wales is now in the pilot/testing phase but was not able to locate any information relating to the way the system is being implemented. As such, the information presented in this section will present the suggestions of the Civil Justice Council’s ODR Advisory Group, but this information may not represent what is actually taking place in England and Wales.

127. Ian Burnett, Lord Chief Justice of Eng. & Wales, Welcome Address at the First International Forum on Online Courts: The Cutting Edge of Digital Reform 1 (Dec. 3, 2018), <https://www.judiciary.uk/wp-content/uploads/2018/12/speech-lcj-online-court.pdf>. The Lord Chief Justice also explains that England is “taking early steps in the” ODR process. *Id.* at 3. He concedes that greater use of artificial intelligence in the judicial process will receive serious consideration. *Id.* at 4. As an interesting aside, Lord Chief Justice Burnett’s speech cites multiple times to a presentation given by Justice Himonas of the Utah Supreme Court, referenced *infra*, note 194. *Id.* at 3 n.3, 4 nn.7–8.

system aims “to provide a better and more efficient service to the public which at the same time improves access to justice.”¹²⁸ Similar to the CRT in British Columbia, those involved with the implementation of court-related ODR in England and Wales believe that the public “must be at the heart of the design process” and that ODR systems should be designed to include “real time feedback.”¹²⁹ During these early stages, the ODR system seems to focus on “low value civil claims” that for many litigants are either too costly or too complex to pursue, or both.¹³⁰

Initial implementation of ODR for courts in England and Wales appears to handle civil claims valued up to 40,000 pounds (approximately \$51,400 US dollars).¹³¹ The U.K.’s Civil Justice ODR Advisory Group (“U.K. ODR Advisory Group”) recommends that this developing system take the form of an online-based court with three distinct tiers of service: dispute avoidance, dispute containment, and dispute resolution.¹³² During “Tier One – Online Evaluation,” users of the system would receive information and tools to help them evaluate their situation and hopefully avoid or mitigate legal problems.¹³³ “Tier Two – Online Facilitation,” would provide trained and experienced online facilitators who can help parties via mediation, document review, advice, and encouragement.¹³⁴ In “Tier Three – Online Judges,” judges would decide cases (or parts of cases) mainly on the basis of electronically submitted documents in “a structured

128. *See id.* at 1. Lord Chief Justice Burnett also notes that “the sensible use of technology may provide enduring solutions” to help “large numbers of individuals and particularly those on low incomes” more easily and less-expensively access the justice system. *Id.* at 2.

129. *Id.* at 2.

130. *See* Audio: *What is ODR for Low Value Civil Claims?*, CTS. & TRIBUNALS JUDICIARY U.K. (Feb. 17, 2015) <https://www.judiciary.uk/publications/what-is-odr-for-low-value-civil-claims-audio-version/>. There is also a short video with this same information available directly at <https://www.youtube.com/watch?v=MQfLPpqITfk>.

131. CIV. JUST. COUNCIL, ADR AND CIVIL JUSTICE: FINAL REPORT §§ 5.1–5.3 (2018), <https://www.judiciary.uk/wp-content/uploads/2018/12/CJC-ADR-Report-FINAL-Dec-2018-2.pdf>; *cf.* *What is ODR for Low Value Civil Claims*, *supra* note 130 (discussing values up to 25,000 pounds); Letter from Richard Susskind to Lord Briggs LJ, U.K. Royal Courts of Justice (Mar. 31, 2016) [hereinafter Letter from Richard Susskind], <https://www.judiciary.uk/wp-content/uploads/2016/04/cjc-odr-advisory-group-response-to-lj-briggs-report.pdf> (explaining the inclination to start with lower value claims (10,000 pounds) where there are many pro se litigants or where many lawyers recognize that it is unreasonable for a lawyer to be involved).

132. CIV. JUST. COUNCIL, ONLINE DISPUTE RESOLUTION FOR LOW VALUE CIVIL CLAIMS 19–21 (2015), <https://www.judiciary.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version.pdf>.

133. *Id.* at 19.

134. *Id.* at 19–20. The facilitators will lead this phase of court ODR in an “inquisitorial rather than adversarial manner.” *Id.* at 20. Court-users who proceed to Tier Two would pay a fee. *Id.*

but still adversarial system of online pleading and argument.”¹³⁵ This three-tiered system, by focusing more on dispute avoidance and containment and less on dispute resolution, would “embrace a more preventative philosophy” than the philosophy currently employed in the judicial system.¹³⁶ The U.K. ODR Advisory Group also suggests the following in regards to implementing this new online court: robust empirical research, open public discourse, and the importance of the appropriate “look and feel” of the court ODR system.¹³⁷

As the U.K.’s new online court is only in the public beta testing phase,¹³⁸ there appears to be little evidence of what the court actually looks like or the initial results of the court. It seems that the initial rollout only utilizes something similar to “Tier One – Online Evaluation,” as recommended by the U.K. ODR Advisory Group.¹³⁹ One unintended consequence of this new system is that more defenses are being presented; if the number of disputed cases increases, the need for an effective ODR system is imperative so that courts do not become even more strained than they already are.¹⁴⁰ The U.K. ADR Working Group recognizes that confidentiality, security, accuracy, and quality are all areas of concern for the new system.¹⁴¹ In order for ODR to achieve more public acceptance, the group recommends that ODR “establish a set of standards” for all of its many iterations,¹⁴² and “establish itself in the public consciousness in order to realise its vast potential.”¹⁴³

F. China

If the CRT of British Columbia has a legitimate claim as the first in the world to implement ODR into a public justice system, then China has a legitimate claim as a pioneer in exploring the outer limits of the use of

135. *Id.* at 20. Court-users in Tier Three would pay a significantly higher fee than in Tier Two, but much lower than the cost for traditional court users. *Id.*

136. *Id.* at 18. The U.K. ODR Advisory Group recommended implementing “Tier Three – Online Judges” first because it “is the part of the new service that makes the online court a court and . . . it . . . will most relieve pressure from the current court system.” Letter from Richard Susskind, *supra* note 131, at 3.

137. See Letter from Richard Susskind, *supra* note 131, at 5–7.

138. CIV. JUST. COUNCIL, *supra* note 131, §§ 5.1–5.6.

139. *Id.* § 5.3.

140. *Id.* § 5.4.

141. *Id.* § 7.21.

142. *Id.* § 9.18.

143. *Id.* § 9.11.

online justice and artificial intelligence (“AI”). China recently implemented internet courts in three parts of the country: Hangzhou, Beijing, and Guangzhou.¹⁴⁴ These courts may be especially useful in a country that has approximately eight-hundred million internet users, or more than double the entire population of the US.¹⁴⁵ The first internet court in the country was established in Hangzhou in 2017.¹⁴⁶ The Beijing Internet Court claims to have the first AI judge “of its kind in the world.”¹⁴⁷ A brief overview of the Hangzhou and Beijing Internet Courts follows.

1. *Hangzhou Internet Court*¹⁴⁸

The Hangzhou Court of the Internet homepage includes scrolling banners, information for parties, and highlights about features of the court.¹⁴⁹ The court aims to “maintain cyber security, resolve the disputes involving the Internet, and promote the deep integration of the Internet and economic society.”¹⁵⁰ The process will hopefully save people time, money, and allow users to file a lawsuit in five minutes.¹⁵¹ After a suit is filed and both parties log into the system, they enter a phase of “pre-litigation mediation.”¹⁵² Cases eligible for this court include disputes over online shopping (contractual and products liability), internet copyright infringement, internet service, and financial loan contracts.¹⁵³

144. Guodong Du & Meng Yu, *China Establishes Three Internet Courts to Try Internet-Related Cases Online: Inside China's Internet Courts Series -01*, CHINA JUST. OBSERVER (Dec. 16, 2018), <https://www.chinajusticeobserver.com/insights/china-establishes-three-internet-courts-to-try-internet-related-cases-online.html>. Because the Guangzhou Court of the Internet does not appear to provide an English translation of its website, this Note will focus on only the Hangzhou and Beijing courts. See GUANGZHOU CT. INTERNET <https://www.gzinternetcourt.gov.cn/index.html> (last visited Jan. 16, 2021).

145. See *China First Internet Court Handles over 10,000 Cases*, CHINA DAILY (Aug. 18, 2018, 3:21 PM), <http://www.chinadaily.com.cn/a/201808/18/WS5b77c8f4a310add14f386801.html>.

146. *Id.*

147. *Beijing Internet Court Launches Online Litigation Service Center*, BEIJING INTERNET CT. (July 1, 2019), https://english.bjinternetcourt.gov.cn/2019-07/01/c_190.htm.

148. Only the homepage of the Hangzhou Court of the Internet is translated into English, so the information provided in this subsection of the Note will be very limited. See *The Litigation Platform of Hangzhou Internet Court*, HANGZHOU INTERNET CT., <https://www.netcourt.gov.cn/?lang=En> (last visited Mar. 13, 2021).

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

During the court’s first year it oversaw more than 11,000 cases.¹⁵⁴ At least 9,600 of those cases were resolved, and the average case lasted thirty-eight days—or about half the time of traditional court.¹⁵⁵ These initial numbers provide evidence that the court is starting to achieve some of its goals related to integrating the court into economic society. But others feel that the court has room for improvement: some allege that the court is not impartial because the court’s software is supported by Alibaba Group, and most internet-related disputes in the area involve Alibaba and its subsidiaries.¹⁵⁶

2. *Beijing Internet Court*¹⁵⁷

The Beijing Internet Court began operating as a “24/7” internet court on September 9, 2018.¹⁵⁸ Some describe this court as an indication of “a new model of social governance system.”¹⁵⁹ A judge who works on the court says that online cases “save time and expense for litigants (as they do not have to travel to the court), while improving judicial efficiency and transparency.”¹⁶⁰ Other objectives the court aims to achieve are “openness and inclusiveness, platform neutrality and data sharing, innovation and upgrading, security and control.”¹⁶¹ The court currently has jurisdiction over eleven types of cases, including disputes involving online shopping, online service contracts, financial loan contracts, internet copyright, internet domain, and internet public interest.¹⁶²

154. See *China First Internet Court Handles over 10,000 Cases*, *supra* note 145; see also Du & Yu, *supra* note 144 (reporting that the Hangzhou Internet Court handled more than 12,000 cases during the first year); Yin Han, *Round-the-Clock Cyber Court Opens in Beijing*, GLOBAL TIMES (Sep. 9, 2018, 11:28 PM), <http://www.globaltimes.cn/content/1118968.shtml> (also reporting that the Hangzhou court saw 12,000 cases during its first year).

155. *China First Internet Court Handles over 10,000 Cases*, *supra* note 145; see also Du & Yu, *supra* note 144 (reporting that close to 10,4000 cases were resolved by the court during year one); Han, *supra* note 154 (reporting similarly, that 10,600 cases were resolved the first year). Du & Yu also reported that the average trial lasted twenty-eight minutes. Du & Yu, *supra* note 144.

156. Du & Yu, *supra* note 144.

157. A large portion of the Beijing Internet Court website is translated into English. See BEIJING INTERNET CT., <https://english.bjinternetcourt.gov.cn/> (last visited Mar. 14, 2021). This may be an attempt to make the court more accessible on a global level.

158. Han, *supra* note 154.

159. *Id.* (quoting Qin An, head of the Institute of the China Cyberspace Strategy).

160. Cao Yin, *Cybercourts Ease Judicial Workloads, Provide Better Rulings*, BEIJING INTERNET CT. (Apr. 8, 2019), https://english.bjinternetcourt.gov.cn/2019/04/08/c_113.htm (quoting Liu Shuhan, who has served on the court since its inception).

161. *Introduction: Beijing Internet Court*, BEIJING INTERNET CT. (Mar. 26, 2019), https://english.bjinternetcourt.gov.cn/2019-03/26/c_26.htm.

162. *Jurisdiction*, BEIJING INTERNET CT. (Mar. 25, 2019), https://english.bjinternetcourt.gov.cn/2019-03/25/c_23.htm.

The Beijing Internet Court website has many user-friendly features, including visuals, graphics, scrolling banners, and links to explanatory videos.¹⁶³ Once a party registers on the system, uploads digital identification, and creates a username and password, the system uses a QR code and facial-recognition technology to secure the account.¹⁶⁴ Parties can then file a case online, upload a complaint (or use a form template to create one), and upload any evidence they have.¹⁶⁵ At that point, a judge reviews the material; if the case is accepted, the judge will notify the complainant and send case information to the defendant.¹⁶⁶ Once the defendant logs into the system, the parties can choose to participate in mediation.¹⁶⁷ If mediation is not successful or the parties decline mediation, the case is referred to the court for trial.¹⁶⁸ Parties are notified of the hearing via text and receive summons via the online platform.¹⁶⁹ When the time for trial arrives, parties use the online system/app to participate in and “attend” the trial.¹⁷⁰ The entire process explained in this paragraph is executed via the online court platform.

In terms of judicial use of AI, China may be unparalleled. China uses blockchain to help secure data transmission, storage, and authenticity; voice recognition software to make court records as trials occur; and technology to automatically create first drafts of judgments based on case transcripts and legal principles relevant to the case.¹⁷¹ Perhaps the most futuristic feature of the Beijing Online Court is the use of an “AI judge claimed to be ‘the first of its kind in the world.’”¹⁷² “The Judge has a female image with a voice, facial expressions and actions based on a real person, one of the court’s judges. . . . [T]he AI judge will help the court’s judges complete repetitive basic work, including litigation reception, thus enabling professional practitioners to focus better on their trial work.”¹⁷³

163. See BEIJING INTERNET CT., *supra* note 157. This website offers many similar features to British Columbia’s CRT website. See CIV. RES. TRIBUNAL, *supra* note 60.

164. See Video: *Online Lawsuit*, BEIJING INTERNET CT. (May 9, 2019), https://english.bjinter-netcourt.gov.cn/2019-05/09/c_158.htm. The video is embedded on the webpage. *Id.*

165. *Id.*

166. *Id.*

167. *Id.* If the parties decide to mediate, there are more than seventy mediation agencies that can assist the parties. *Id.*

168. *Id.*

169. *Id.*

170. *Id.* The trial is recorded, and parties are notified of the results via a method of their choosing. *Id.* If a party disagrees with the holding, the party can file an appeal online. *Id.*

171. See *Introduction: Beijing Internet Court*, *supra* note 161.

172. See *Beijing Internet Court Launches Online Litigation Service Center*, *supra* note 147.

173. *Id.* For those interested, the website shows a picture of what appears to be the AI judge on screen and the human judge, who was the human inspiration for the AI judge, on stage. *Id.*

There appears to be little public information about whether the Beijing Internet Court is achieving its goals such as judicial efficiency and judicial transparency.¹⁷⁴ However, the court may be starting to achieve its goals of saving litigants time and money: the court reports that cases can be filed in five minutes, printing paper documents is unnecessary, court hearings take about twenty-eight minutes, a third of “cases are filed during non-working hours,” and the average case length from “filing to final conclusion” is twenty days.¹⁷⁵

G. Other Jurisdictions

The following information will not be as detailed as the information in the previous sections in this Part IV. Rather, the information that follows is meant to illustrate that there are other jurisdictions using or considering ODR, and that the iterations of such ODR are not uniform.

1. Singapore

Singapore planned to implement ODR for motor vehicle accident claims by the end of 2019.¹⁷⁶ The ODR system would provide help to litigants in the form of outcome simulations, AI, and mediation opportunities, in the hope of saving parties money, providing information to the public, and helping the judicial system improve efficiency.¹⁷⁷ Singapore currently provides ODR for some small claims such as contractual disputes and non-motor vehicle property damage.¹⁷⁸ “[A]n e-Negotiation feature . . . allows the parties to negotiate and reach a settlement on the disputed claims without having to go to the courts.”¹⁷⁹

174. This may be in large part because the court is just over a year old.

175. *All You Need to Know About China’s Internet Courts*, BEIJING INTERNET CT. (Apr. 11, 2019), https://english.bjinternetcourt.gov.cn/2019-04/11/c_125.htm. The website references China’s Internet Courts, and the sources include the Hangzhou and Guangzhou court websites, so these figures may be the aggregate of the three internet courts in the country. *See id.*

176. *See* Tay Peck Gek, *Singapore Public Can Resolve Motor Accidents Disputes Online from Year-End*, BUS. TIMES (Jan. 7, 2019, 11:49 AM), <https://www.businesstimes.com.sg/transport/singapore-public-can-resolve-motor-accidents-disputes-online-from-year-end> (referencing announcement by Chief Justice Sundaresh Menon).

177. *Id.*

178. *See Singapore Launches e-Filing and e-Negotiation for Small Claims*, NAT’L CTR. TECH. & DISP. RESOL. (July 11, 2017), <http://odr.info/singapore-launches-e-filing-and-e-negotiation-for-small-claims/> (explaining that claim values must not exceed \$10,000 Singapore dollars (approximately \$7,340 USD) or \$20,000 Singapore dollars (approximately \$14,780 USD) “if both parties agree in writing”).

179. *Id.*

2. Victoria, Australia

Victoria, Australia is considering using ODR for “small civil claims” in order to “improve citizen access to justice services, particularly for those with a disability or ‘experiencing the tyranny of distance.’”¹⁸⁰ The ODR service, which would be offered by the Victorian Civil and Administrative Tribunal, may be out of pilot testing and available to the general public by 2022.¹⁸¹ Initial pilot testing shows that some ODR features such as text and video chat are “second nature” to an increasingly tech-savvy public, which provides “a soft landing into circumstances that are otherwise quite daunting for [many].”¹⁸² Some feel that this court-related ODR has the potential to handle minor criminal matters and some larger civil matters.¹⁸³ In addition, some suggest providing help centers at traditional court buildings “to avoid marginalising those that need assistance accessing and/or navigating the online court platform.”¹⁸⁴

3. Los Angeles County, California

In 2019 the Los Angeles County Department of Consumer and Business Affairs was recognized for using information technology in the county’s ODR program.¹⁸⁵ The department uses a 24/7 ODR platform that allows users “to check their case status, message their mediator, and upload supporting documents.”¹⁸⁶ The mediation aspect of the program,

180. Justin Hendry, *Victoria Looks to Settle Legal Disputes Online*, ITNEWS (Sept. 10, 2018, 6:55 AM), <https://www.itnews.com.au/news/victoria-looks-to-settle-legal-disputes-online-512159>.

181. *See id.* The Victorian Civil and Administrative Tribunal “hears and decides civil and administrative legal cases outside of the court system, without the need for legal support.” *Id.*

182. Victorian Civil and Administrative Tribunal (VCAT), *VCAT Online Dispute Resolution Pilot*, YOUTUBE (Sept. 13, 2018), <https://www.youtube.com/watch?v=1cuKRgj-0ng>.

183. *See id.*

184. KATARINA PALMGREN, CHURCHILL FELLOWSHIP REPORT: 2018, at 10 (The Winston Churchill Memorial Trust, 2018), <https://www.churchilltrust.com.au/project/to-explore-the-use-of-online-dispute-resolution-to-resolve-civil-disputes/>. Katarina Palmgren is the Court Legal Advisor to the Magistrates’ Court of Victoria. *Id.* at 1.

185. *See DCBA Receives Prestigious National Award for Mediation Program*, L.A. COUNTY: DEP’T CONSUMER & BUS. AFF. (June 28, 2019), <https://dcba.lacounty.gov/newsroom/dcba-receives-prestigious-national-award-for-mediation-program/>. While Los Angeles County’s Department of Consumer and Business Affairs ODR is not court-provided, it is an alternative for parties that do not want to go to court. *See id.* Like the website for the CRT of British Columbia, the department’s website has a very user-friendly feel with icons, graphics, and easy-to-read text. *See* L.A. COUNTY: DEP’T CONSUMER & BUS. AFF., <https://dcba.lacounty.gov/> (last visited Oct. 28, 2019).

186. *DCBA Receives Prestigious National Award for Mediation Program*, *supra* note 185.

which can be done via video chat, has helped resolve three-fourths of parties’ cases that use ODR.¹⁸⁷ The process aims to make government accessible, transparent, “and serve the greatest number of people . . . with . . . few resources.”¹⁸⁸

4. Other courts

Many other jurisdictions are implementing or considering implementing some form of ODR into the judicial process. In India “[t]he law ministry has asked government departments to go for online arbitration to fast track dispute resolution and bring down government litigation.”¹⁸⁹ Buenos Aires, Argentina offers a free online mediation service to help “neighbors and citizens” resolve their conflicts.¹⁹⁰ A single judge in Travis County, Texas, “uses ODR for small claims cases of \$10,000 or less” that has eased court burdens, eliminated the need for some litigants to hire lawyers, and “foster[ed] genial solutions to disputes.”¹⁹¹ These three examples highlight that court-related ODR continues to spread across the globe and can be implemented anywhere from single court rooms to country-wide platforms.

187. *See id.* The department “is the only government agency in Southern California that provides free [ODR].” *Id.*

188. Giuseppe Leone, *Online Mediation – Why It Works So Well at the Los Angeles County’s Department of Consumer and Business Affairs*, VIRTUAL MEDIATION LAB, <https://www.virtualmediationlab.com/virtual-mediation-lab-usa-international/why-the-online-dispute-resolution-system-of-los-angeles-countys-department-of-consumer-and-business-affairs-is-so-successful/> (last visited Apr. 12, 2021) (interview with Caroline Torosis, Dispute Resolution Manager, Los Angeles County Department of Consumer and Business Affairs). The embedded video can be accessed directly at https://www.youtube.com/watch?time_continue=20&v=q6WIu2GUJhU.

189. Pradeep Thakur, *Govt Departments Told to Go for E-arbitration to Speed Up Dispute Resolution*, TIMES OF INDIA (Aug. 21, 2017, 3:37 IST), <https://timesofindia.indiatimes.com/india/govt-departments-told-to-go-for-e-arbitration-to-speed-up-dispute-resolution/articleshow/60150587.cms>. Government litigation equals close to half of the pending court cases in the country. *See id.* (Forty-six percent of three crore cases, or forty-six percent of approximately thirty million cases.).

190. *See Videos About the On-line Mediation Program Launched by Buenos Aires City Government in Argentina: Developed by ODR Latinoamerica*, NAT’L CTR. TECH. & DISP. RESOL. (Oct. 1, 2018), <http://odr.info/mel-videos/> (The information cited comes directly from the embedded videos, which are in Spanish; the author of this Note speaks Spanish and provided the translation.). It appears that the government of Buenos Aires is attempting to set a more congenial resolution environment by describing some parties as “neighbors.”

191. Zack Quaintance, *Judges, Private Sector Spread Online Dispute Resolution in Courts*, GOV’T TECH. (Mar. 20, 2019), <https://www.govtech.com/public-safety/Judges-Private-Sector-Spread-Online-Dispute-Resolution-in-Courts.html>. Judge Randall Slagle uses Modria, from Tyler Technologies, for ODR in his courtroom. *Id.* Interestingly, Judge Slagle notes that many parties “resolve their case in a way where they can continue being neighbors. Both parties—while maybe not being extremely happy—are not going to hate each other.” *Id.*

V. UTAH'S COURT-RELATED ODR GOALS AND IMPLEMENTATION
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Utah used a federal grant to create an ODR platform for small claims to “assist users in filing documents, defending claims, communicating with other parties, learning about processes, and participating in their small claims case.”¹⁹² This new system aims “to improve access to justice and efficiency of the court process with innovative technology,” while recognizing that “new generations of court users have different expectations about what resources government should provide online and how those resources should be presented.”¹⁹³ Justice Deno Himonas of the Supreme Court of Utah explained that ODR is one of the ways that Utah is trying to “narrow the access-to-justice gap, particularly for the poorer and less educated segments of [the State’s] population.”¹⁹⁴ Small claims were chosen to test the feasibility of court ODR because “[small claims] are relatively simple procedurally and involve a high percentage of pro se parties.”¹⁹⁵ The ODR pilot project commenced on September 19, 2018 in West Valley City Justice Court¹⁹⁶ and has since expanded to four additional justice courts in the State: Carbon County, Orem City, Sunset, and Wasatch.¹⁹⁷

192. MELISSE STIGLICH, UTAH ONLINE DISPUTE RESOLUTION PILOT PROJECT: TECHNICAL ASSISTANCE GRANT: FINAL REPORT 3 (2017), <https://ncsc.contentdm.oclc.org/digital/api/collection/adr/id/63/download>. Utah received a State Justice Institute Technical Assistance Grant in conjunction with its court ODR project. *See id.* The State Justice Institute “was established by federal law in 1948 to improve the quality of justice in state courts, and foster innovative, efficient solutions to common issues faced by all courts.” Grants, ST. JUST. INST., <http://www.sji.gov/grants/> (last visited Oct. 29, 2019). Grants awarded by the institute are meant to “benefit the nation’s judicial system and the public it serves.” *Id.*

193. STIGLICH, *supra* note 192, at 5. The ODR Steering Committee noted that “success would depend on using technologies that are familiar to potential system users In short, ODR must be easier, faster, and cheaper than traditional practice, while providing all parties the opportunity to be heard and treated fairly.” *Id.* at 5–6.

194. Deno Himonas, *Utah’s Online Dispute Resolution Program*, 122 DICK. L. REV. 875, 875 (2018). Justice Himonas believes that Utah was “the first in the country to launch this soup-to-nuts approach” to court-related ODR. *Id.* at 880.

195. STIGLICH, *supra* note 192, at 5. If the small claims ODR pilot is successful, plans exist to expand court-related ODR to additional case types. *Id.* at 8. Small claims courts in Utah allow claim values up to \$11,000. Himonas, *supra* note 194, at 881.

196. Utah Supreme Court Standing Order No. 13) para. 1(a) (effective Sept. 19, 2018) (regarding Small Claims Online Dispute Resolution Pilot Project).

197. *Online Dispute Resolution (ODR) Pilot Project*, UTAH CTS., <https://www.utcourts.gov/smallclaimsodr/> (last updated Jan. 11, 2021). Approximately 600 people used ODR in West Valley City Justice Court during the first four months of the pilot. *See* Ben Winslow, *In His State of the Judiciary, the Utah Supreme Court Chief Justice Pushes Online Dispute Services*, FOX 13: SALT LAKE CITY, <https://fox13now.com/2019/01/28/in-his-state-of-the-judiciary-the-utah-supreme-courts-chief-justice-pushes-online-dispute-services/> (last updated Jan. 28, 2019).

Unlike the CRT in British Columbia that uses software from an outside vendor, Utah created its own software for court ODR.¹⁹⁸

Utah’s court ODR homepage is simple: there is information about which of the State’s courts use ODR and links to small claims and ODR-related checklists and forms, but there are no graphics and no general descriptions of what ODR is or how it works in Utah.¹⁹⁹ When a new small claims case is filed in one of the five ODR pilot justice courts, the plaintiff must either “request for exemption from ODR” or “register for the ODR system within [seven] days of filing the [c]laim;” “[u]pon being served with a [c]laim, the defendant must, within [fourteen] days,” either register for the ODR system or request an exemption from ODR.²⁰⁰ Once two parties register for the ODR system and answer some preliminary questions provided to help them settle the dispute,²⁰¹ a facilitator is assigned to the case within seven days to “to guide the parties through ODR and to assist them in reaching a settlement. To advance these goals, the facilitator may provide information . . . regarding procedure and evaluate the [c]laim or any defenses.”²⁰² The negotiation platform looks like a typical text-messaging app; messages include the date and time sent, as well as a reminder in the text boxes “to use respectful language that keeps the conversation

198. See Himonas, *supra* note 194, at 880. Cost was a key factor in Utah’s decision to create its own court ODR platform. *Id.* at 898.

199. See *Online Dispute Resolution (ODR) Pilot Project*, *supra* note 197. There is a link on the homepage to a one-page PDF file entitled “Notice to Plaintiff of Online Dispute Resolution,” but the form provides minimal information about ODR. *See id.* There is also a link to a four-page PDF entitled “Help Page” that describes the ODR process in much more detail, but only does so through answers to eight frequently asked questions (“FAQ”). *See Online Dispute Resolution: Frequently Asked Questions*, UTAH CTS. (Jul. 25, 2019), <https://www.utcourts.gov/smallclaimsodr/docs/FAQs-ODR.pdf>. This FAQ document describes ODR as “an alternative to court . . . [and] a chance to communicate with the other party and try to come to an agreement instead of going to court.” *Id.* This may be an attempt by Utah to set the stage for a more congenial resolution process.

200. Utah Supreme Court Standing Order No. 13 (regarding Small Claims Online Dispute Resolution Pilot Project) paras. 2–5 (effective Sept. 19, 2018). Failure by the plaintiff to comply with this process will result in automatic dismissal of the claim; failure to comply with this process by the defendant may result in a default judgment for the plaintiff. *See id.* Exemptions can be granted “by the court due to an undue hardship. Undue hardship exists when a party cannot access the online system or participate in the online process without substantial difficulty or expense.” *Id.*, para 5. Parties can use this system via desktop or mobile device. *See Himonas, supra* note 194, at 881.

201. *See Himonas, supra* note 194, at 882–86 (including screenshots of the system and some of the preliminary questions).

202. Utah Supreme Court Standing Order No. 13 (regarding Small Claims Online Dispute Resolution Pilot Project) para. 6 (effective Sept. 19, 2018). “Extensively” and “specially trained” facilitators are the key to success in Justice Himonas’s opinion. *See Himonas, supra* note 194, at 882, 892, 896. Justice Himonas says that debtors can be protected by ODR, with the help of “specially trained” facilitators, to help “create more of a level playing field” and reduce the level of “information asymmetry” that is present for many unrepresented parties. *Id.* at 897.

moving forward.”²⁰³ The parties have fourteen days to reach a resolution and can post messages at any time, but the facilitator has the ability to adjust timelines as needed.²⁰⁴

If an agreement is reached, the facilitator can assist the parties in preparing a settlement agreement²⁰⁵ that can be signed online.²⁰⁶ If an agreement is not reached, the facilitator can assist the parties in preparing forms and documents to submit to the court in preparation for trial; the information provided will be trial-relevant information, agreed to by both parties in order to maintain confidentiality.²⁰⁷ A trial is scheduled within three weeks of the facilitator’s notification to the court that negotiation was unsuccessful.²⁰⁸ Once the “Trial Preparation Document” is submitted to the court, the ODR process is over and parties can no longer retrieve any information from the ODR system.²⁰⁹

Because Utah’s small claims ODR process is relatively new, there does not appear to be much publicly available information about how the system is working.²¹⁰ Justice Himonas commented that when “Phase II” of the system comes online, it will include collection proceedings.²¹¹

203. See Himonas, *supra* note 194, at 887–88. Using words like “respectful language” and “moving forward” may also be attempts by Utah to set the stage for more productive and less hostile negotiations.

204. See *Online Dispute Resolution: Frequently Asked Questions*, *supra* note 197; Utah Supreme Court Standing Order No. 13 (regarding Small Claims Online Dispute Resolution Pilot Project) para. 6 (effective Sept. 19, 2018). Facilitators can also “communicate privately with any party at any time for the purposes of facilitating a resolution,” as well as request that parties share “information and evidence” relevant to the case. *Id.* Information shared during this phase remains confidential and will not be shared without permission from the relevant parties. *Id.*

205. Utah Supreme Court Standing Order No. 13 (regarding Small Claims Online Dispute Resolution Pilot Project) para. 7 (effective Sept. 19, 2018). Parties also have the option to settle the agreement and complete their own settlement agreement, as long as the parties do so within the timeline provided by the facilitator. *Id.*

206. *Online Dispute Resolution: Frequently Asked Questions*, *supra* note 199; see also Himonas, *supra* note 194, at 891 (providing a screen shot with some helpful information related to signing agreements online).

207. See Utah Supreme Court Standing Order No. 13 (regarding Small Claims Online Dispute Resolution Pilot Project) para. 8 (effective Sept. 19, 2018); *Online Dispute Resolution: Frequently Asked Questions*, *supra* note 199.

208. See Utah Supreme Court Standing Order No. 13 (regarding Small Claims Online Dispute Resolution Pilot Project) para 8 (effective Sept. 19, 2018); *Online Dispute Resolution: Frequently Asked Questions*, *supra* note 199. Justice Himonas explains that if a judge feels that she has enough information to make a decision once the facilitator submits the relevant trial preparation documents to her, she can decide the merits of the case “electronically” if the parties agree to such a process. Himonas, *supra* note 194, at 894.

209. See *Online Dispute Resolution: Frequently Asked Questions*, *supra* note 199.

210. See Winslow, *supra* note 197 (The only information the author of this Note found relevant to the performance of the Utah ODR system is that approximately 600 people used the system in West Valley City Justice Court during the first four months after implementation.).

211. Himonas, *supra* note 194, at 894.

While noting that many debt collectors are supportive of Utah’s ODR system, Justice Himonas says that letting the justice system “turn into a place where debt collectors go to file and receive defaults” is a real concern, and that the new system would be “a flat-out failure if [the system results in] more defaults faster.”²¹²

VI. RECOMMENDATIONS FOR IMPROVEMENT TO UTAH’S COURT-RELATED ODR

A. *Maintain a Visible and Continuous Public Presence*

A visible and continuous public ODR presence will make it more likely that Utah residents are aware of court ODR, know how court ODR can help them, and know how to access court ODR. Designating one or two key court personnel to spread the word about court-related ODR may be helpful. In British Columbia, Shannon Salter, the Chair of the CRT, has spoken publicly about ODR via numerous platforms including conferences, podcasts, and webinars.²¹³ Justice Himonas of the Utah Supreme Court has publicly spoken multiple times about Utah’s ODR system.²¹⁴ Justice Himonas is an excellent advocate and a dynamic speaker, but his primary professional responsibility is that of a justice on the court. It may be helpful to find another individual who can devote more time and energy to engaging and educating the public about ODR through various platforms. Millennials, who are familiar with and spend much time online, may be especially receptive to videos that they can watch online or podcasts that they can listen to at their convenience.

A regular online ODR presence may also help inform and educate the public about Utah’s court-related ODR. Social media may be particularly relevant to millennials who are very familiar with and regularly use this type of media to communicate.²¹⁵ If Utah courts want to encourage the public to use the ODR service, the State should invest money into internet advertisements or search engine optimization. When one performs a

212. *Id.* at 896–97.

213. *See, e.g.,* Salter, *supra* note 52 (speaking at an international forum in England).

214. *See, e.g.,* Himonas, *supra* note 194 (speaking at Penn State University). The author of this Note recently witnessed Justice Himonas speak about Utah’s efforts to reform the judicial system. Justice Himonas spoke at the BYU Law and Leadership Conference on October 18, 2019, at the J. Reuben Clark Law School on the campus of Brigham Young University.

215. *See* GALLUP, *supra* note 18, at 108 (explaining that 93% of millennials interact with friends and family via social media). For example, Utah courts could engage and educate the public on social media via short video snippets, links to helpful articles, and by responding to posts and comments.

“Google” search with the terms “court ODR Utah,” three of the top five results are links to ODR related information on the Utah Courts website.²¹⁶ A coordinated public awareness campaign using print and electronic resources may also be helpful in informing the public about the availability and benefits associated with court ODR.²¹⁷

B. Make the ODR Website More Useful to the Public

Utah should make the court-related ODR website more user friendly. While the Utah court ODR website does provide some information about small claims ODR, the information is limited. In addition, the information is not presented in a way that the public, and millennials in particular, are used to seeing information online. Websites like Amazon, Google, Facebook, Twitter, and CNN use many pictures, videos, and clickable links to present information to users. Utah’s ODR homepage on the other hand, presents a limited amount of information using mainly text and links to PDFs; there are no graphics or video clips.²¹⁸ In addition to short videos and visual aids, Utah could provide decision trees, calculators, and a live help or chat feature on the court ODR website.²¹⁹ Utah could also expand the “Frequently Asked Questions” information on the website to provide answers to more questions; this information might be organized by topic to help readers find information more quickly.²²⁰ Whatever Utah’s judiciary decides, system administrators should ensure that the technology is useable and useful so as not to frustrate ODR participants,²²¹ keeping in mind that “new generations of court users have different expectations

216. The author of this Note performed this exact “Google” search on November 4, 2019. While no information was found to support the hypothesis that Utah is currently spending money on search engine optimization, past business experience leads this author to believe that the fact that Utah’s ODR website claims the first three spots for the search results of “court ODR Utah,” is evidence that Utah is investing money online to promote small claims court ODR.

217. See Letter from Richard Susskind, *supra* note 131.

218. See *Online Dispute Resolution (ODR) Pilot Project*, *supra* note 197. In comparison, British Columbia’s CRT website presents information with videos, expandable links, and many different visual aids. See CIV. RESOL. TRIBUNAL, *supra* note 60.

219. See JOINT TECH. COMM., ODR FOR COURTS: VERSION 2.0 31–32 (2017), https://www.ncsc.org/_data/assets/pdf_file/0031/18499/2017-12-18-odr-for-courts-v2-final.pdf.

220. The “Frequently Asked Questions” information is currently presented on a four-page PDF. See *Online Dispute Resolution: Frequently Asked Questions*, *supra* note 199. Providing this information directly on the website, with expandable links to the answers may be more familiar and helpful to internet savvy users, like millennials.

221. See JOINT TECH. COMM., *supra* note 219, at 27, 29–32. One specific suggestion is to “[r]educe text ‘clutter’ to ensure users see essential information.” *Id.* at 31. When evaluating suggestions such as calculators or decision trees, it is also worth considering whether it is a “proper” function of the court to provide parties tools that can help them evaluate the merits of their claims.

about what resources government should provide online and how those resources should be presented.”²²²

C. Perform Outreach to Groups that ODR is Meant to Help

Utah should specifically reach out to the “poorer and less educated segments of [its] population” in order to increase access to justice,²²³ and the State could also reach out to millennials, who may be more skeptical of the justice system than prior generations.²²⁴ The State may choose to approach this access to justice gap by focusing on inclusivity in all aspects of the judicial system.²²⁵ For those who are skeptical of the justice system, Utah could make a concerted effort to explain that ODR is a way to talk and reconcile, rather than the initial steps of a long fight. This may be particularly helpful to explain at the start of the process, especially when parties can apply for an exemption from ODR participation. Positive, congenial word choices on both the ODR platform and explanatory materials might help build confidence in ODR and, more generally, in the justice system.²²⁶ Utah courts might also take extra time or digital space to explain how users’ information is protected and kept confidential because court ODR users will likely share very personal information over the new system. One way to focus efforts on building trust and confidence in this new ODR system and in the justice system in general is to keep the new system “customer-focused.”²²⁷ Finally, it may be helpful to remember that to equalize the playing field for parties, “equal” does not always have to mean the same level of service and information provided to all parties; sometimes it may take more time and energy to help one party be on equal footing with another party who is more prepared, more experienced, and has more resources.

D. Engage with and Be Accountable to the Public

One way that Utah might more fully engage with the public while implementing court-related ODR is to ask each participant of the new system

222. See STIGLICH, *supra* note 192, at 5.

223. Himonas, *supra* note 194, at 875.

224. See, e.g., Cillizza, *supra* note 25.

225. See Salter, *supra* note 52, at 40:45.

226. MI-Resolve in Michigan describes the negotiation platform of its court ODR as the “conversation space.” See *Frequently Asked Questions*, *supra* note 92, at “How do I access my conversation space?” Washtenaw County, Michigan, on its court ODR website, recognizes that “everyone makes mistakes.” See 14A DIST. CT. WASHTENAW COUNTY MICH., *supra* note 97.

227. See JOINT TECH. COMM., *supra* note 219, at 20.

to take a post-ODR survey. The survey could include questions such as how long the process took, what times of the day users were most likely to use the system, how helpful the information provided by the court was, and whether parties felt that they were treated fairly during the ODR process.²²⁸ Utah courts may consider asking anonymous demographic questions about a user's age, education, race, and employment in order to see how certain segments of the population feel about their experience with the ODR system. The State could then use this information to perform outreach to segments of the population that do not feel positively about the process. The judicial system could use this information to help ensure due process for all parties, "applicable in different settings, cultures and jurisdictions, while also reflecting an overarching cohesion and offering durability over time."²²⁹ This may be especially helpful in gaining the trust of citizens that feel disenfranchised by the government, or specifically, gaining the trust of millennials who may be more distrustful of government than others.²³⁰ This user feedback could also be used to improve upon the existing design of the court ODR system.²³¹

Utah could make itself accountable to the public in the administration of court-related ODR by publishing and adhering to established standards.²³² Such standards should measure accessibility, accountability, competency, confidentiality, equality, neutrality, legality, security, and transparency.²³³ Public accounting of security measures may go a long way towards helping users gain confidence in the new ODR system, especially for those like millennials who may be more skeptical of the justice system. Performing and publishing the results of regular security audits may be

228. See *Online Dispute Resolution Offers a New Way to Access Local Courts*, PEW CHARITABLE TRS. (Jan. 4, 2019), <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2019/01/online-dispute-resolution-offers-a-new-way-to-access-local-courts>. The author of this Note based these questions on information found in the section of the Pew Fact Sheet entitled "What would successful ODR Platforms achieve?" See *id.*; see also Daniel Rainey, *Access to Justice and ODR*, BOLD MEASURES IN ODR (Mar. 12, 2019), <https://odr2019.blogspot.com/2019/03/access-to-justice-and-odr-by-daniel.html> ("The new wave of ODR is focusing outward, toward the parties who approach the courts for justice . . .").

229. See Schmitz, *supra* note 50, at 140–41 (internal citation omitted).

230. See Cillizza, *supra* note 25.

231. See CIV. RESOL. TRIBUNAL, *supra* note 67. The CRT in British Columbia publishes monthly user statistics and satisfaction surveys in an effort to be transparent to the public; the CRT uses those statistics and surveys to improve the court ODR system. See *id.*

232. See *ICODR Standards*, INT'L COUNCIL FOR ONLINE DISP. RESOL., <https://icodr.org/standards/> (last visited Nov. 6, 2019) ("build[ing] on previous work by the National Center for Technology and Dispute Resolution").

233. See *id.*

one effective way for the State to account to the public.²³⁴ Blockchain might be a way to help ensure privacy and security of the new ODR system, but the State should further explore the ramifications of blockchain because it is still a relatively new technology.²³⁵

E. Continuously Train and Support ODR Facilitators and Other Court Personnel

As Justice Himonas of the Utah Supreme court emphasized, facilitators are the key to success for Utah’s small claims ODR process²³⁶—as such, facilitators should receive continual and relevant training.²³⁷ Facilitators would benefit from training that addresses such topics as cultural sensitivity, race, gender, and age.²³⁸ One way that Utah might ensure that the State provides qualified and competent ODR facilitators is by requiring some form of accreditation.²³⁹ If facilitators eventually receive authority to provide “limited legal advice,”²⁴⁰ then the legislature could enact laws to provide immunity from legal liability for those facilitators that provide legal advice in good faith.²⁴¹ Courthouse staff should also be trained regularly, especially in the area of customer service. If court-related ODR is truly supposed to be public-facing and is meant to help bridge the access to justice gap, training on patience, effective communication, and conflict resolution may be particularly helpful for staff who will work regularly with those that are distrusting of and hesitant to use the justice system.

234. See Schmitz, *supra* note 50, at 143.

235. See Bernard Marr, *A Very Brief History of Blockchain Technology Everyone Should Read*, FORBES (Feb. 16, 2018, 12:28 AM), <https://www.forbes.com/sites/bernardmarr/2018/02/16/a-very-brief-history-of-blockchain-technology-everyone-should-read/#5e9766317bc4> (claiming that “blockchain technology made its public debut” in 2008).

236. Himonas, *supra* note 194, at 882.

237. See JOINT TECH. COMM., *supra* note 219, at 21–23 (discussing how “ODR initiatives will free up staff to provide more ‘value-add’ assistance”).

238. Training on generational differences could be helpful as well. For example, training on common characteristics of baby boomers and millennials may help facilitators to be more aware of potential roadblocks that ODR could present to different generations.

239. See Schmitz, *supra* note 50, at 96 (suggesting the imposition of “accreditation rules for . . . the neutrals who may facilitate [ODR]”).

240. See Himonas, *supra* note 194, at 882.

241. Because these facilitators may not be licensed attorneys, and will certainly not be attorneys for the parties they assist, the courts could provide an obvious disclaimer on the website and on any authorizations the parties sign. In this way, participants would know that they would not be receiving for example, the benefit of attorney-client privilege, among other benefits that come with a typical attorney-client relationship.

F. Consider Expanding Court ODR to Other Types of Claims

If initial results from Utah's implementation of small claims ODR are positive, the State should consider expanding court-related ODR to other areas. Minor traffic misdemeanor claims should be considered if the new system expands because, like in small claims cases, many traffic ticket cases involve unrepresented parties.²⁴² "Misdemeanors and traffic tickets account for more than half of the state trial caseloads, but most people do not hire attorneys to contest these cases in court."²⁴³ In Washtenaw County, Michigan, ODR for traffic related issues saves parties time and money by allowing them to resolve relatively minor matters at home or on a smart phone, instead of having to go to court and possibly take off time from work.²⁴⁴ Resolving matters online and out of court may be especially attractive to those who feel disenfranchised from the justice system, and to millennials who are very comfortable transacting business online.²⁴⁵ Allowing the public to resolve minor traffic tickets online could save both the public and the government time and money, which would free government resources that could be used to improve the quality of judicial and executive services rendered to the public. Allowing individuals with tickets to interact with judges and police officers in a positive, online setting, with the chance of having a ticket reduced or dismissed, may also lead to better public will toward governing officials.

VII. CONCLUSION

Utah should be lauded for implementing one of the first court-related ODR systems not only in the nation but also in the world. More importantly, the State should be commended for trying to decrease the "access-to-justice gap", especially for the "poorer and less educated segments of [society]." Court ODR may be especially appealing to millennials who make up a large portion of society, and who are increasingly attracted to Utah because of the technological boom that the State is experiencing. To continue improving the new system and expanding access to justice to more individuals, Utah's judicial system should consider the following: maintaining a continuous and visible presence with the public, making the

242. See Schmitz, *supra* note 50, at 104.

243. *Id.* (internal citation omitted).

244. See 14A DIST. CT. WASHTENAW COUNTY MICH., *supra* note 97.

245. See GLOBALWEBINDEX, *supra* note 12, at 31 (reporting that during a one-month period, 83% of millennials surveyed made online purchases, with more than half of the purchasers using a mobile device to do so).

new ODR website even more useful and user friendly, performing outreach to those individuals most at risk of disenfranchisement from the judicial system, publicly accounting the results and progress of the new system, providing continual and relevant training to ODR facilitators and other court staff, and expanding court ODR to more types of claims. Improving Utah’s court ODR and using technology will hopefully continue to expand access to justice, increase efficiency, and generate more good will between the public and government officials—this may be the natural result of courts speaking the “language” of an increasingly tech-savvy public, rather than requiring the public to learn the complicated and somewhat confusing “language” of the law.

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