



**Asia-Pacific
Economic Cooperation**

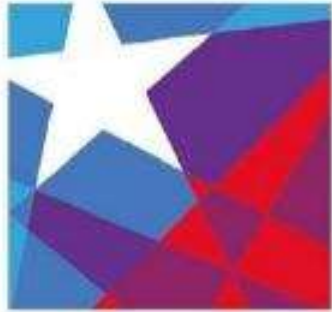
2019/SOM1/EC/WKSP1/003

APEC Collaborative Framework for Online Dispute Resolution

Submitted by: United States



**Stocktake Workshop on the Strengthening
Economic Legal Infrastructure Online Dispute
Resolution Work Plan
Santiago, Chile
2-3 March 2019**



APEC
CHILE 2019

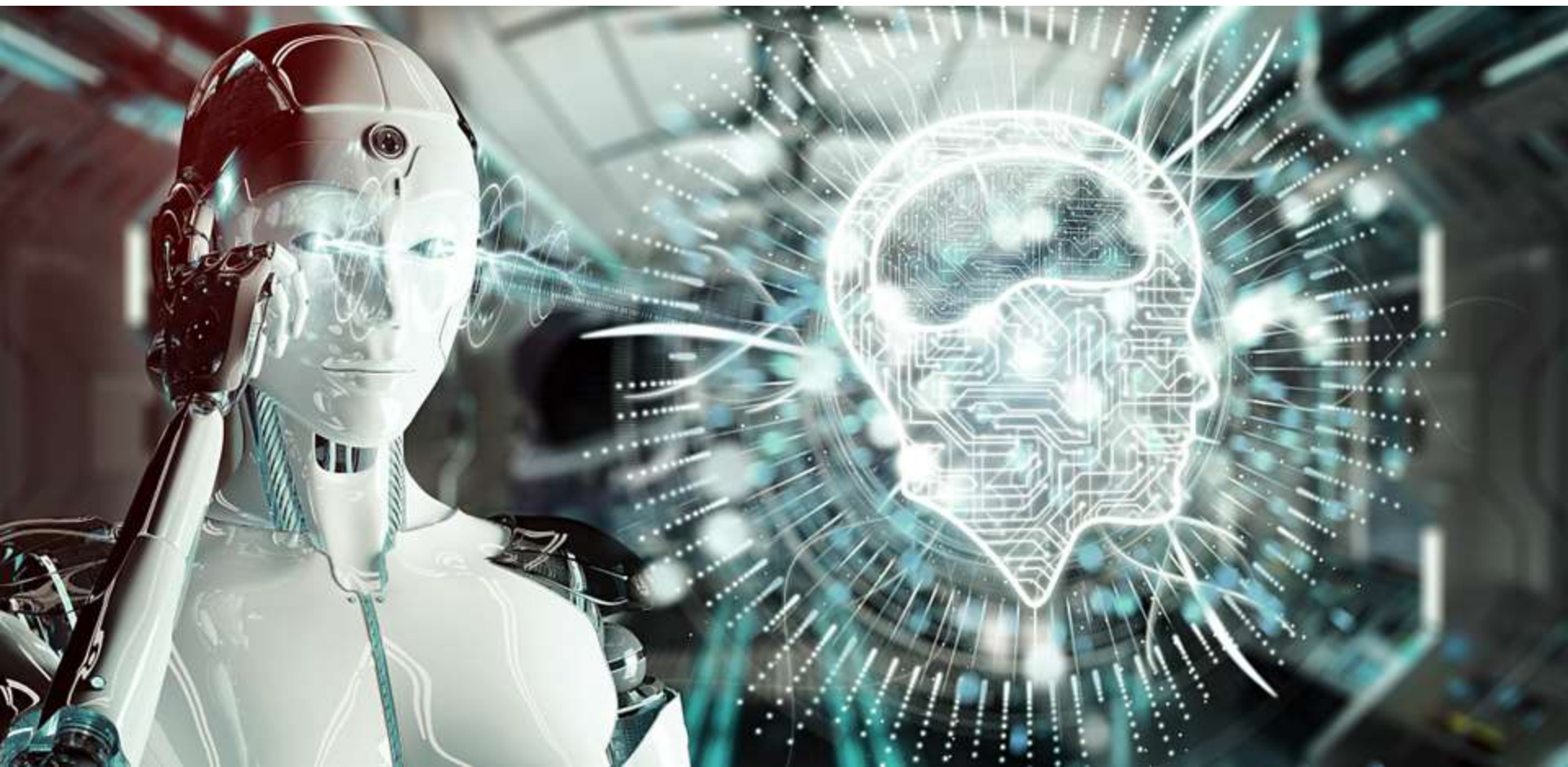


Mike Dennis
ODR Adviser

APEC COLLABORATIVE FRAMEWORK FOR ONLINE DISPUTE RESOLUTION

APEC Stocktake Workshop
SELI ODR Work Plan
SOM 1
Santiago, Chile
March 2, 2019

How Will AI Affect APEC ODR?



Collaborative Framework for ODR

SELI Work Plan

- Pilot with platform host/ODR provider via outreach to regional arbitration/mediation centers to determine possible partners for hosting ODR platform
- Promote harmonization of relevant laws using existing international instruments
- Cross-APEC collaboration (with e.g. ABAC, ECSG, SMEWG, GOS, TWELWG)
- Relevant research/information gathering
- Design ODR platform
- Develop ODR procedural rules
- Build capacity
- Leverage private sector and academic community support
- Explore modern technology use...for contract management or enforcement and dispute prevention



Workshop on Developing a Collaborative Framework for ODR

Osaka, Japan
Nov. 8-9, 2018



Osaka Workshop On Developing Collaborative Framework for ODR

Purpose of workshop:

- Develop Collaborative Framework, ODR procedural rules & standards for pilot with APEC Economies, ODR providers, Regional Arbitration/Mediation Centers and ABAC
- Identify ODR providers, Regional Arbitration/Mediation Center partners to host ODR platform for APEC pilot
- Find businesses to participate in ODR pilot, with ABAC
- Leverage private sector and academic community support.

A green ribbon graphic with the text "PILOT PROGRAM" in white, bold, uppercase letters.

PILOT PROGRAM

OSAKA WORKSHOP ON COLLABORATIVE FRAMEWORK FOR ODR *RECOMMENDATIONS & CONCLUSIONS*

- The APEC EC should consider and endorse the APEC ODR Collaborative Framework
- The Collaborative Framework would be conducive to businesses engaged in cross-border trade (in particular MSMEs)
- APEC should start with a pilot, as per the SELI ODR Work Plan
- As per SELI Work Plan, Economic Committee should initiate pilot with platform hosts/ODR providers, including regional arbitration and mediation centers



Collaborative Framework for ODR

Overview

1. Purpose

What is ODR?

Why ODR?

2. Procedural Rules

3. SELI and APEC Economies

Economy Opt-In

Minimal Oversight

4. APEC Partners/ODR Providers

Follow Procedural Rules

Provide Platform

Share Information

5. SELI Report to EC

6. Participating Businesses

Agree to use ODR

Capacity Building

7. Collaborative Legal Framework for ODR



Collaborative Framework for ODR

1. Purpose

1.1 This Collaborative Framework establishes an APEC-sponsored initiative to use ODR to help global businesses, in particular MSMEs, resolve B2B cross-border disputes focusing on low value disputes....The ODR Framework is designed to promote B2B cross-border confidence by providing quick electronic resolution and enforcement of disputes across borders, languages, and different legal jurisdictions.

1.2. The ODR Framework creates a framework for business, in particular MSMEs, in participating economies, providing [ODR] through negotiation, mediation and arbitration for B2B claims.



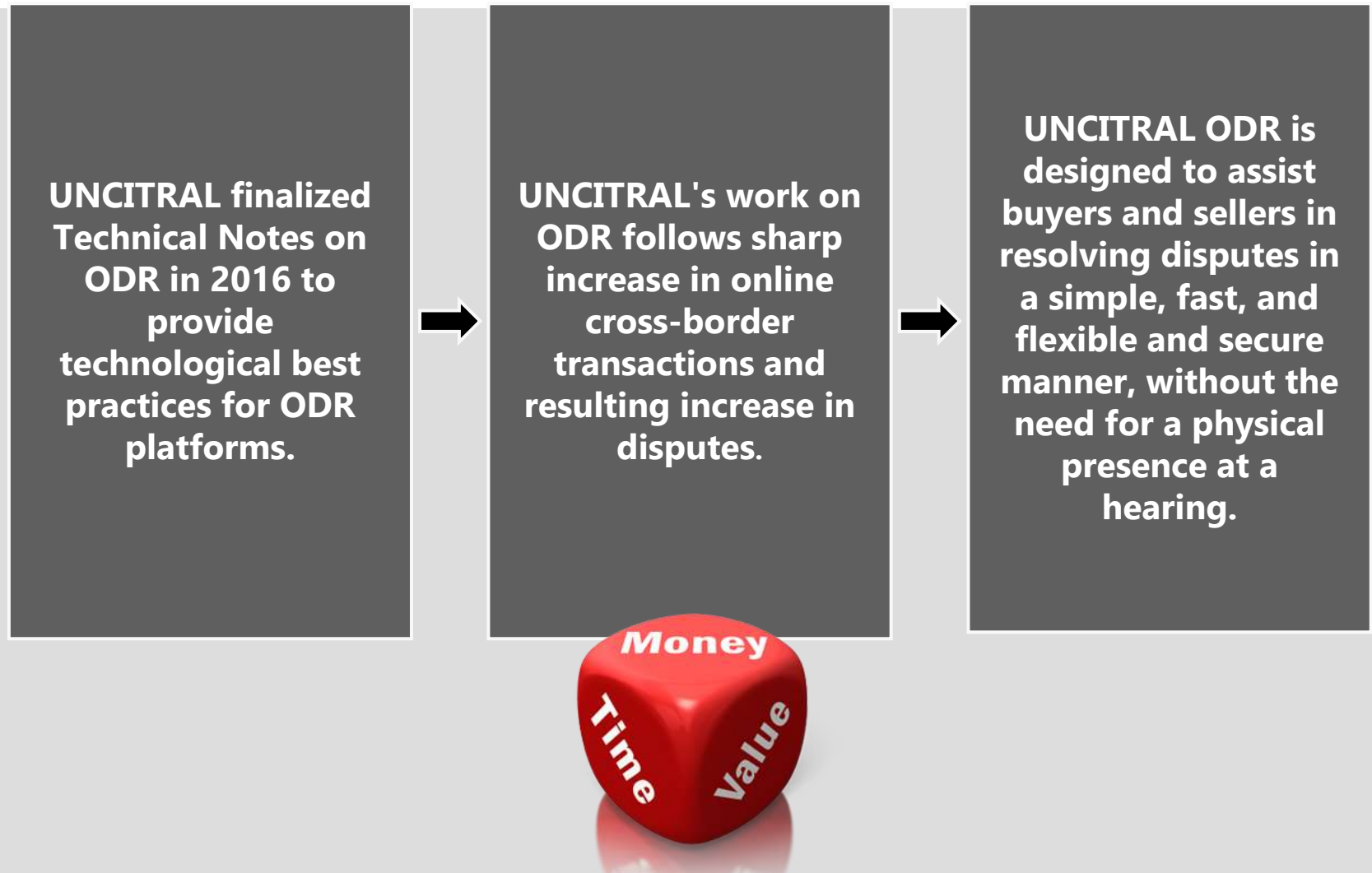
What is ODR?

APEC ODR Follows UNCITRAL Work



What is ODR?

ODR Saves Time and Costs



What is ODR?

UNCITRAL Technical Notes on ODR

"reflect the principles of impartiality, independence, efficiency, effectiveness, due process, fairness, accountability and transparency."

"are expected to contribute significantly to the development of systems to enable the settlement of disputes arising from cross-border low-value sales or service contracts concluded using electronic communications."

"will significantly assist all economies, in particular developing economies and members whose economies are in transition, online dispute resolution administrators, online dispute resolution platforms, neutrals and the parties to online dispute resolution proceedings in developing and using online dispute resolution systems."

GA Resolution 71/138
UNCITRAL Technical
Notes on ODR

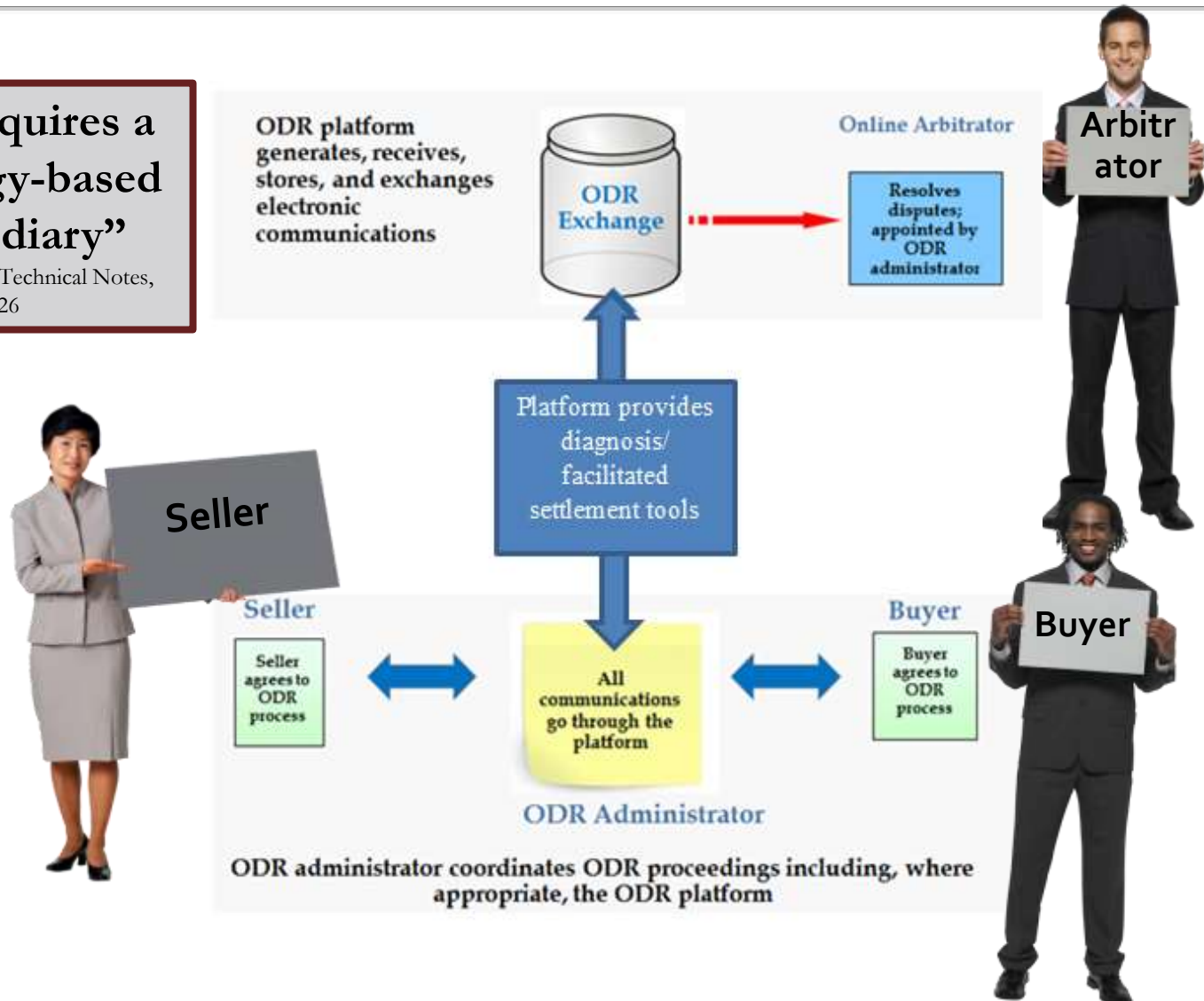


What is ODR?

Requires an ODR Platform

“ODR requires a technology-based intermediary”

UNCITRAL ODR Technical Notes,
para 26



What is ODR?

Requires an ODR Platform



- Common technological platform needed to offer ODR
- All communications in ODR proceedings should take place via the ODR platform.
- The ODR platform should meet highest standards of data security, privacy, integrity, and preservation as well as fraud detection and prevention.

Why ODR?

Many Disputes Unresolved

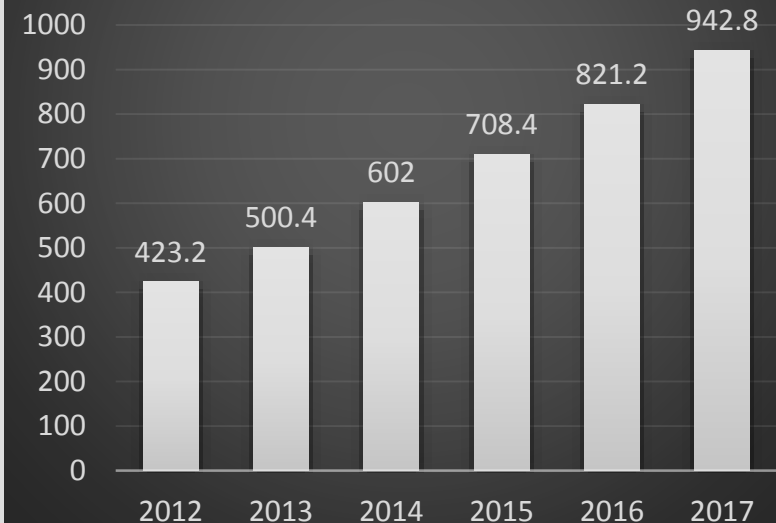
- In APEC, dispute resolution is a great challenge for MSMEs trading abroad.
 - 83% of APEC MSMEs report effective and consistent dispute resolution is badly needed.

(Driving Economic Growth Through Cross-Border E-Commerce in APEC: Empowering MSMEs and Eliminating Barriers at 35, 69, 81.
<http://ncapc.org/docs/ABAC%20Documents/USC%20Marshall%20ABAC%202015%20MSMEs.pdf> (interviews with 506 business executives plus 244 survey responses))

- According to EU, for B2B –
 - 25% of B2B disputes are unresolved i.e. 1.2 million annually.
 - Businesses involved in disputes with other businesses average 6 disputes.
 - As businesses grow from small to medium-sized companies, disputes grow five-fold.

(Ecorys, Study on the use of Alternative Dispute Resolution for Business to Business disputes in the European Union at 6, 123, 125 (commissioned by the European Commission)
<http://www.adrcenterinternational.com/wp-content/uploads/2015/01/ADR-Final-Report-151012.pdf> (based in part on Flash Eurobarometer 347: Business to Business Alternative Dispute Resolution in the EU (interviews with 10,840 businesses including MSMEs)); European Commission, DG Enterprise and Industry, Business Disputes Keep Businesses from Doing Business, at 4.)

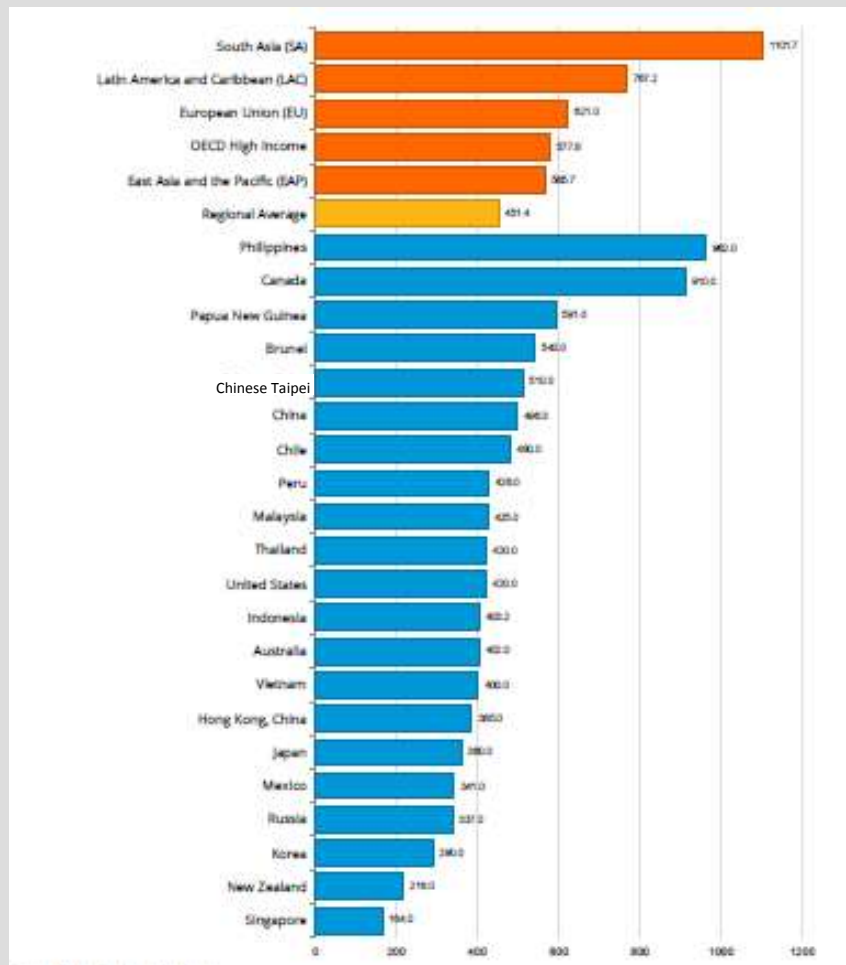
Worldwide E-Commerce disputes per year (in millions)



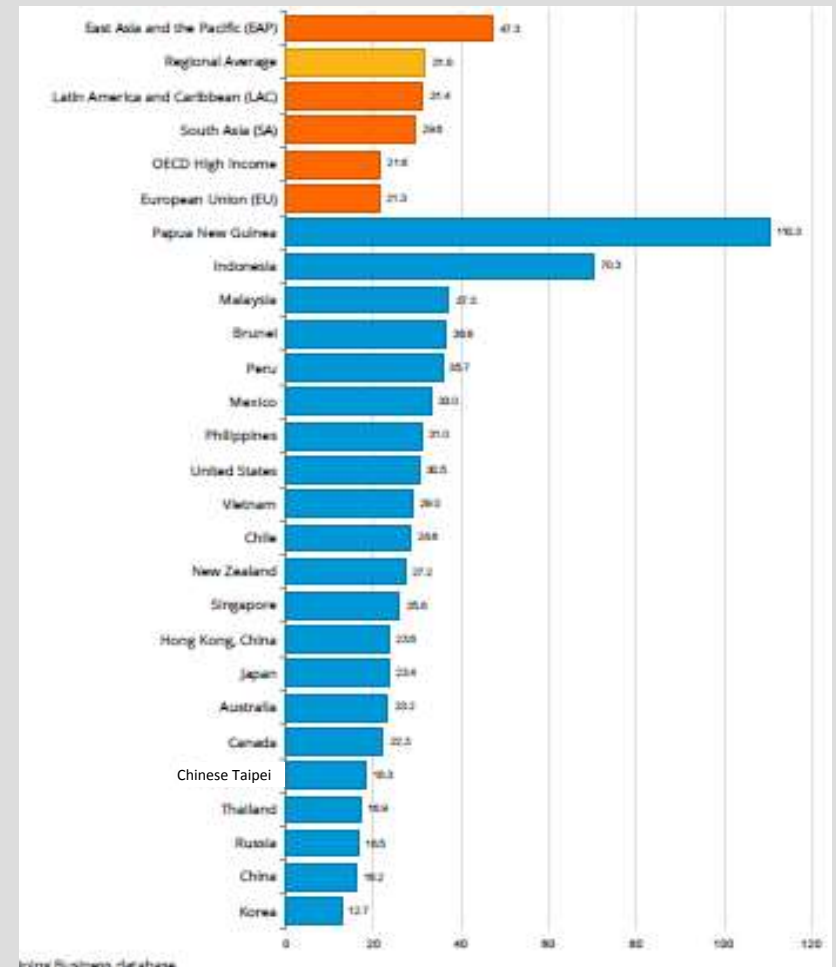
WHY ODR?

Courts Not An Option in APEC

Time (Days)



Cost (% of Claim)



WHY ODR?

Existing Arbitration Forums Not An Option

- In-person arbitration predominant form of dispute resolution in cross-border trade.

(Queen Mary University of London and White & Case, 2015 International Arbitration Survey <https://www.whitecase.com/publications/insight/2015-international-arbitration-survey-improvements-and-innovations> (90% of respondents prefer international arbitration to resolve cross border commercial disputes))

- “Surveys find that firms are attracted to arbitration due to the expertise and neutrality of the decision maker, confidentiality of the proceedings, a lack of familiarity with the courts and laws in foreign countries, and enforceability.”

(Myburgh, A., & Paniagua, J., The Impact of UNCITRAL on FDI, *supra*, Section 2)

- But according to multiple sources, including the World Bank, arbitration is too expensive/slow for e-commerce/supply chain disputes.

(Myburgh, A., & Paniagua, J., The Impact of UNCITRAL on FDI, (2017), *supra*); 2015 International Arbitration Survey, *supra* (to reduce the time and cost associated with international arbitration, 92% of respondents favored inclusion of simplified procedures in institutional rules for claims under a certain value).



Why ODR?

Works for Governments



- **Mexico:** *Concilianet* provides government-run ODR platform for B2C. Participation is mandatory for domestic vendors. Available at http://www.profeco.gob.mx/Folletos/Queja_ing.pdf



- **Republic of Korea:** e-commerce dispute resolution committee mediates disputes in e-commerce transactions between consumers & providers. Available at <https://www.ecmc.or.kr/>



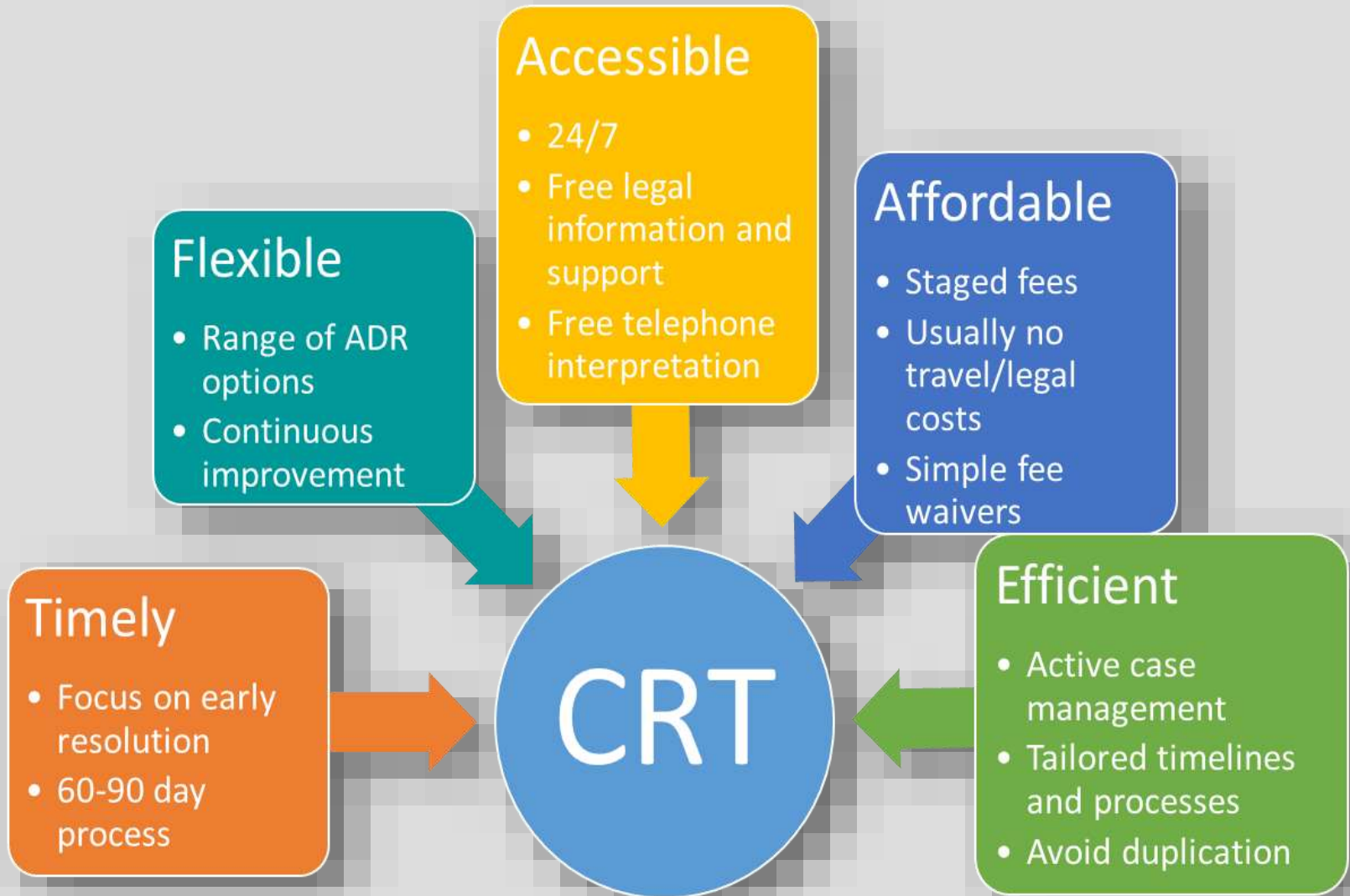
- **China:** e-courts offered in Hangzhou Province (home of Alibaba) for e-shopping, copyright, and online financial services disputes (since August 2015). All materials filed online; courtroom replaced by three-way video conference. Available at http://www.chinadaily.com.cn/bizchina/2015-12/12/content_22708965.htm



- **Canada:** Quebec PARLe provides free ODR dispute resolution platform for consumer disputes; British Columbia Civil Resolution Tribunal provides ODR for small claims under \$5,000. Available at <http://www.slaw.ca/2017/02/10/publicly-funded-consumer-odr-is-now-a-reality-in-quebec/>
<https://poseidon01.ssrn.com/delivery.php?ID=790086090127100085019068126099125117016083053010057028103075006126105109078101004074010017029060104024054108097076097083004100005023049082020120111076080101118104031019062051091030064109091111113094006107004121008120087113107116088075097099080027125064&EXT=pdf>

Why ODR?

Works for British Columbia



Why ODR?

Works for U.S. Courts

- Utah Courts Small Claims
- New Haven and Hartford Judicial Districts Contract Collection (Connecticut).
- Franklin County Small Claims (Ohio)
- Travis County Small Claims (Austin, Texas)
- Fulton County Small Claims, (Atlanta, Georgia)
- Ohio Court of Claims (Columbus, Ohio)
- Online Traffic Pleading, Ottawa County, Michigan
- Family Court Compliance, Clark County Family Court (Las Vegas, NV)

The screenshot shows the homepage of the Franklin County Municipal Court's Online Dispute Resolution (ODR) system. The header is dark teal with the court's seal on the left and the text "Online Dispute Resolution Franklin County Municipal Court Columbus, OH" on the right. Below the header is a navigation bar with links for "Home", "Help Center", and "Negotiation Space". The main content area has a light blue background. On the left, there is a graphic titled "Online Dispute Resolution FITS" with the subtitle "OF A MEDIATED AGREEMENT". It features six icons with corresponding text: "you determine agreement" (person icon), "reduce time at court" (scales icon), "minimize harm to credit" (notepad icon), "create a plan that works" (checkmark icon), "end legal dispute quicker" (clock icon), and "avoid garnishments" (bank icon). On the right, there is a "Welcome!" section with a paragraph of text and a "START" button.

Online Dispute Resolution
Franklin County Municipal Court
Columbus, OH

Home Help Center Negotiation Space

Online Dispute Resolution FITS
OF A MEDIATED AGREEMENT

- you determine agreement
- reduce time at court
- minimize harm to credit
- create a plan that works
- end legal dispute quicker
- avoid garnishments

Welcome!

Are you involved in a lawsuit? You can provide some information about you and the other party will be guided through the process that is acceptable to everyone. If you don't reach an agreement, you can still go to court. Explore the [Help Center](#) if you'd like.

START

Why ODR?

Works in Private Sector

- ODR in the global marketplace is a dynamic but fragmented field.
- So far, none of these initiatives has resulted in widespread use of ODR in B2B disputes involving MSMEs.



Collaborative Framework for ODR

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7. Collaborative Legal Framework for ODR



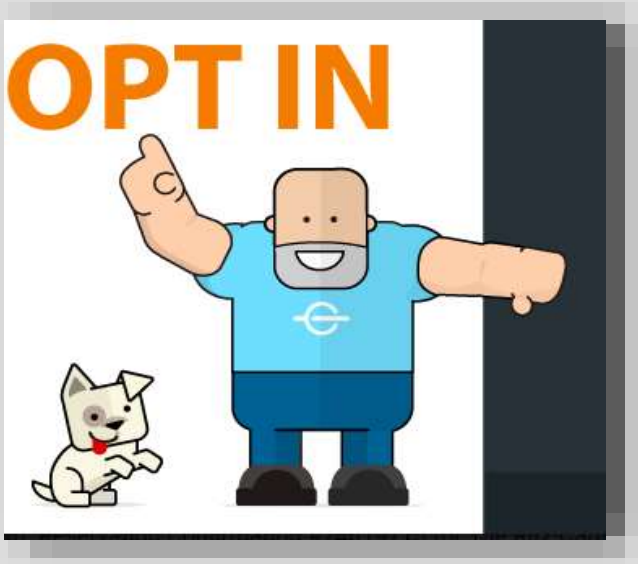
2. ODR Model Procedural Rules



- 2.2 Participating APEC ODR providers operating under the ODR Framework agree to use the attached Model Procedural Rules for the APEC Collaborative Framework for ODR.

Role of SELI/APEC Economies

Economy Opt-In



- 3.1 APEC economies participating in the ODR Framework join a cross-border network that resolves low value disputes by implementing agreed reciprocal procedures, in accordance with the Procedural Rules.

3. ROLE of SELI/APEC Economies

Maintain List of Providers on Website



- 3.3 SELI will ... assist the APEC Secretariat in maintaining a list on the EC website of ODR providers from participating APEC economies that have agreed to process claims using ODR, as provided in the Procedural Rules.

3. ROLE of SELI/APEC Economies

Maintain List of Providers on Website



- APEC ... assumes no responsibility or liability for the professional ability or reputation of, or the quality of services provided by, the entities whose names appear on the following list...Before engaging the entities, users should exercise independent judgment and take independent advice, as necessary.

3. ROLE of SELI/APEC Economies

Maintain List of Providers on Website

The screenshot shows the homepage of econsumer.gov. At the top, there is a language selection dropdown set to "English" and a "Go" button. Below the header, a navigation bar contains links for "HOME", "REPORT YOUR COMPLAINT", "RESOLVE YOUR COMPLAINT" (highlighted in orange), and "NEWS & RESOURCES". A sidebar on the left lists "Overview", "Alternative Dispute Resolution", "International Directory of ADR Providers" (highlighted), "Trust Seals & Escrows", and "Payment Card Protections". The main content area is titled "International Directory of ADR's" and includes a paragraph explaining the directory's purpose. Below this, a section titled "Things you should know:" lists four bullet points regarding fees, compliance, disendorsement, and government intervention. At the bottom, there is an "OnGuard Online" logo and a large green button labeled "Proceed to the ADR Directory" with a right-pointing arrow.

econsumer.gov
Your site for cross-border consumer complaints.

Select your language preference:

[About Us](#) | [Member Countries](#) | [Privacy Policy](#)

[HOME](#) [REPORT YOUR COMPLAINT](#) [RESOLVE YOUR COMPLAINT](#) [NEWS & RESOURCES](#)

Overview

Alternative Dispute Resolution

International Directory of ADR Providers

Trust Seals & Escrows

Payment Card Protections

International Directory of ADR's

In this directory, you will find a list of providers of ADR services that may help you resolve your cross-border dispute.

Things you should know:

- Some of these providers may charge a small fee for their services.
- Each of these ADR providers has certified their compliance with the [ADR Guidelines](#) approved by the [Global Business Dialogue in E-Commerce](#) and negotiated with [Consumers International](#).
- You should note, however, that econsumer.gov members do not endorse any of these providers. When selecting a provider from this directory, you should exercise the same care you apply when dealing with any other Web site or distance seller. If you have any problem with any of these providers, please [file a complaint](#) with our site.
- You should also note that in certain countries competent government agencies may not intervene against a trader as long as a consumer is trying to resolve a complaint through an ADR provider.

OnGuard Online YOUR SAFETY NET™ →
Learn before you shop.

Proceed to the ADR Directory →

3. ROLE of SELI/APEC Economies

Limited Oversight of ODR Providers



- 4.5 If an ODR provider appears not to be in compliance with the Procedural Rules, SELI should give written notification to the the ODR provider, ... [requesting] such issues [be remedied] in 30 days
- If the ODR provider fails to meet these requirements, SELI may remove the ODR provider from its official list.

4. Partnering ODR Providers

Maintain Own ODR Platform

4.2 Collaborative Framework

Each ODR Provider will provide its own ODR platform for the resolution of disputes under the ODR Framework



Public vs. Private Sector

- Private Sector better suited to design and implement ODR platform for pilot involving B2B
- Private sector must innovate or die and better suited to deliver leading edge product that works for ODR
- Private sector has experience using pilot to iron out problems and ensure market readiness

4. Partnering ODR Providers

Follow Procedural Rules and Framework



- 4.1 SELI will require that an ODR provider submit a written undertaking of its commitment to comply with the Procedural Rules and the terms of the ODR Framework.
- 4.2 Any fees charged under the ODR Framework should be affordable and commensurate with the amount in dispute.

4. Partnering ODR Providers

Gather and Share Information



- 4.3 ODR providers are expected to gather the following [aggregate] information, and submit that information to SELI by the end of June and December....
- 4.3 bis. ODR providers are encouraged to publish the data themselves....

Partnering ODR Providers

Gather and Share Information



4.4. The ODR provider will ask the parties to complete a brief and optional feedback questionnaire asking at a minimum:

- (a) "Do you think the process was fair?"
- (b) "Do you think the dispute was handled in a reasonable timeframe?"
- (c) "Do you think the neutral handled your case with dignity and fairness?"
- (d) "Do you think the system was easy to use?"
- (e) "Would you recommend ODR to others?"

5. SELI Reports to Economic Committee



- 5.1 ODR providers should treat all information submitted by businesses as confidential.
- 5.2 SELI should make best efforts to aggregate data received from ODR Providers and submit a report by end of March every year to the Economic Committee.

6. Participating Businesses



6.1 APEC member economies should encourage businesses, especially MSMEs, to use participating ODR providers for low value claims mediation and arbitration.

6.2 Businesses may be charged a reasonable fee by the ODR provider.

6. Participating Businesses

Capacity Building

- Key implementation hurdle: getting businesses to agree to ODR.
- Requires businesses to understand and trust ODR.

APEC will take the lead in explaining ODR to private sector, governments, and legal community and build capacity by leveraging support from trade associations and chambers of commerce, donors, law facilities and corporate social responsibility programs.

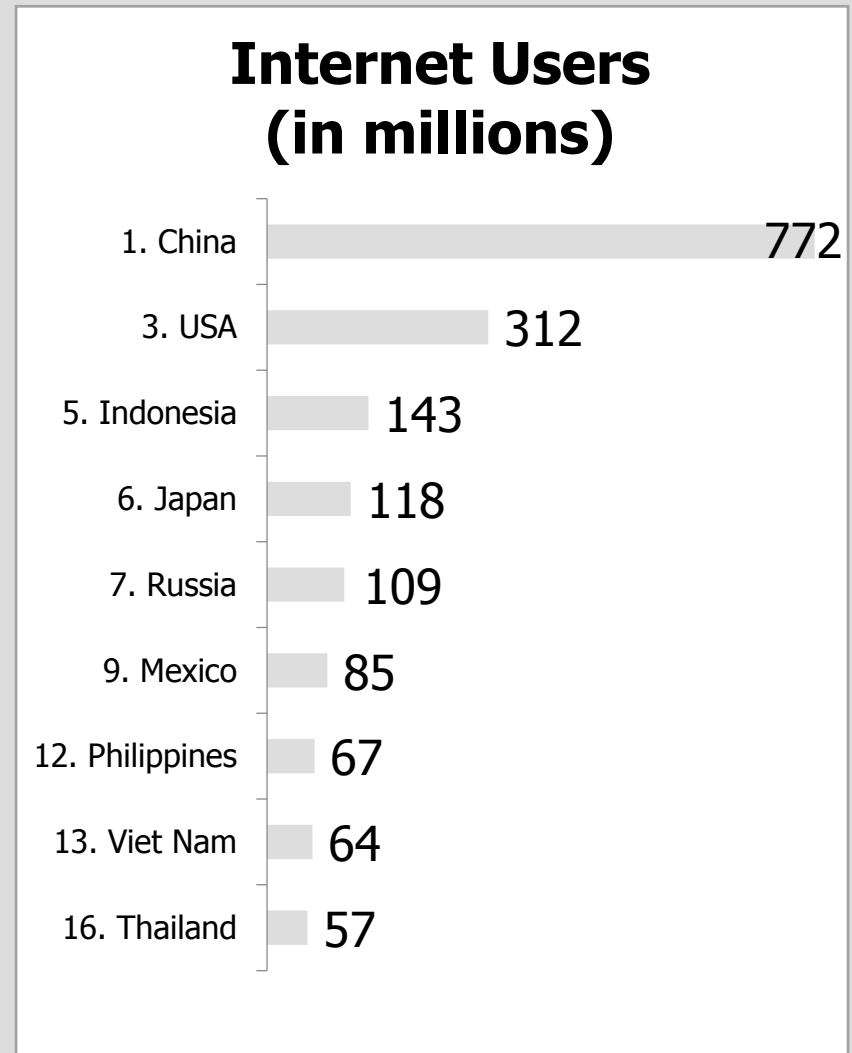


6. Participating Businesses

Capacity Building

- Over 4.2 billion people (55.1%) now connected to the Internet.
- 7 billion people (95% of the global population) live in area covered by a mobile-cellular network. Mobile-broadband networks (3G or above) reach 84% of the global population.
- 9 out of the top 16 economies for internet use are APEC economies.

ICT Facts and Figures 2016;
Top 20 Countries with the Highest Number of Internet Users,
<http://www.internetworldstats.com/top20.htm>.



7. Comparative Legal Framework

Enforcement of Arbitration Awards

- 7.1 An ODR Arbitration Award is final and binding on all parties, however it is subject to review, setting aside, recognition and enforcement in accordance with applicable law (domestic or foreign).
- 7.2 APEC member economies may enter into bilateral agreements to enforce arbitration awards in accordance with the ODR Framework, including requesting assistance from payment networks or referring cases to collection agencies.
- 7.3 With the exception of paragraph 7.1 above, no review of the merits of the Arbitration Award is allowed.



8. Cooperative Legal Framework

8. "Although ODR laws and practices do not need to be strictly identical throughout APEC, member economies should support the development and recognition of private international law instruments applicable to ODR, including but not limited to:
- a. the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards
 - b. the 2006 UNCITRAL Model Law on International Commercial Arbitration;
 - c. the 2005 UN Convention on the Use of Electronic Communications in International Contracts; and
 - d. the 1996 UNCITRAL Model Law on E-Commerce."



8. Cooperative Legal Framework

Implementation of Legal Instruments

	NY Convention	ML on Arbitration	ML on Electronic Commerce	Convention on Use of Electronic Comm'	CISG
Australia	√	√	√	--	√
Brunei	√	√	√	--	--
Canada	√	√	√	--	√
Chile	√	√	--	--	√
China	√	√	√	--	√
Hong Kong	√	√	√	--	--
Indonesia	√	--	--	--	--
Japan	√	√	--	--	√
Malaysia	√	√	√	--	--
Mexico	√	√	√	--	√

8. Cooperative Legal Framework

Implementation of Legal Instruments

	NY Convention	ML on Arbitration	ML on Electronic Commerce	Convention on the Use of Electronic Communication	CISG
New Zealand	√	√	√	--	√
New Guinea	--	--	--	--	--
Peru	√	√	--	--	√
Philippines	√	√	√	--	--
Rep. Korea	√	√	√	--	√
Russia	√	√	--	√	√
Singapore	√	√	√	√	√
Chinese Taipei	√	√	--	--	--
Thailand	√	√	√	--	--
USA	√	√	√	--	√
Vietnam	√	--	√	--	√

ODR
COLLABORATIVE
FRAMEWORK
*OVERVIEW AND
PILOT*

COMMENTATORS:

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KONG, CHINA**

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5. SELI Report to EC
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 - Capacity Building
7. Collaborative Legal Framework for ODR



Conclusion

A Cooperative APEC ODR Framework will:



Promote and maintain strong relations with business partners in global supply chain



Provide MSMEs with opportunity to compete and flourish in supply chain



Build capacity for economic growth based on trade, not aid



Empower women to participate more fully in the global chain



Accelerate and extend real access to justice for all

THANK YOU

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