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## How online courts effectively supplement digital trade and contribute to sustainable development goals: Insights from a case study of China

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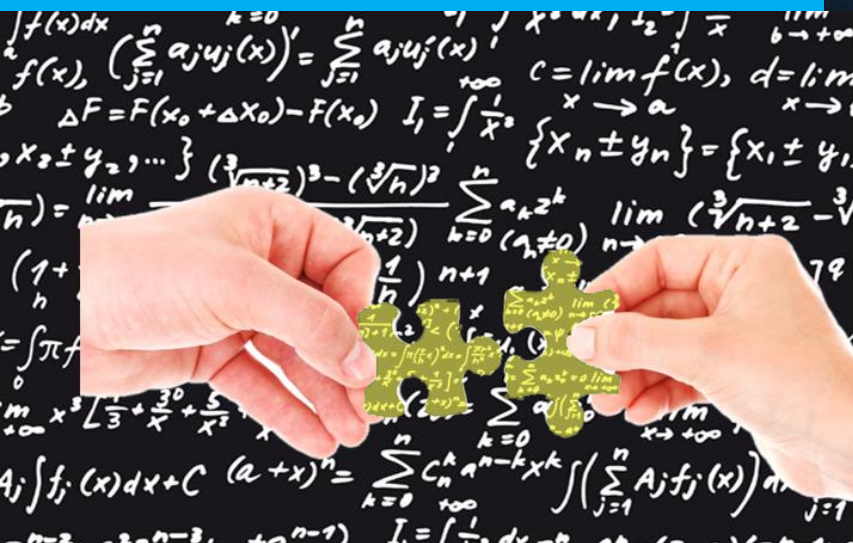
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# ESCAP

Economic and Social Commission  
for Asia and the Pacific

## How Online Courts Effectively Supplement Digital Trade and Contribute to Sustainable Development Goals: Insights from a Case Study of China



Martin Yat-cheung Kwan

ASIA-PACIFIC RESEARCH AND TRAINING NETWORK ON TRADE

# Working Paper

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ASIA-PACIFIC RESEARCH AND TRAINING NETWORK ON TRADE

# WORKING PAPER

## **How Online Courts Effectively Supplement Digital Trade and Contribute to Sustainable Development Goals Insights from the Chinese case study**

Martin Yat-cheung Kwan<sup>1</sup>

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## Abstract

The increasing volume of digital trades inevitably generates more disputes. An efficient online dispute resolution mechanism is an important digital trade promotion policy measure, as it ensures the cyber order and strengthens online users' confidence. The immediate implication is the furtherance of Sustainable Development Goal (SDG) 16.3 on better access to justice and SDG 16.7 on having a responsive judiciary. But having an online judiciary does not only improve SDG 16. Drawing insights from the Internet Courts in China, the disputes arisen from the voluminous amount of digital trades provide more opportunities for the judiciary to contribute to other SDGs, such as SDG 2 (food safety), 3 (public health), 4 (online education), 8 (equality), 9 (intellectual property and innovation) and 10 (employment). Whilst digital trades can promote SDGs, they are usually private/commercial interests-oriented and only incidentally benefit the SDGs. Inevitably there will be occasional problems (e.g. irresponsible commercial behavior or market failures) which could undermine the SDGs. By contrast, the online courts are public interests-oriented, with the goal of maintaining public order and development. This legal policy measure helps align private digital trades and public SDGs. The judgements—coupled with widespread news reporting and subsequent response by other relevant public organs—help monitor and ensure proper sustainable development.

Two major policy recommendations emerge from the study. First, having a public, court-based system contributes more to the SDGs than having private dispute resolutions mechanisms (e.g. private and confidential arbitration or mediation) alone. The latter will not lead to publicly-available and normative judgements that serve as public guidance for the market and the SDGs. At the same time, other public organs become better informed—via the disputes in public courts—of the latest market developments and needs and can act accordingly. Second, it is helpful to broadly define the scope of jurisdiction of the online dispute resolution organs. This strategically allows the courts to hear more cases from the vast amount of digital trades, and accordingly offer guidance on more SDG areas and issues.

**Keywords:** Digital trade, E-commerce, Online dispute resolution, E-commerce dispute resolution, E-commerce law, China Internet Courts, SDGs

**JEL Codes:** K33, K41, L86, Q01

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## **1. Introduction**

The ever-increasing volume of digital trade, e-commerce (business-to-business and business-to-consumer) and investment inevitably generate more disputes. There is therefore a need for a swift and cost-effective means of dispute resolution. This gives rise to online dispute resolution (ODR).

The introduction of an efficient ODR mechanism is an essential aspect of digital trade promotion policy as it ensures the cyber order and strengthens online users' confidence. Many jurisdictions including the EU and US have been experimenting with ODR to different extents (Giacalone and Salehi, 2022).

The online, virtual nature means it is more affordable and flexible than the traditional, in-person means (Shi, Sourdin, and Li, 2021). More cases can be heard online as a result.

The direct implication of ODR would be the furtherance of the UN Sustainable Development Goal (SDG) 16.3 on better access to justice and SDG 16.7 on having a responsive judiciary. However, there are many more, and this article will highlight the underexplored, yet dynamic, role of court-based ODR in promoting the SDGs. The Chinese approach will be discussed to illustrate the potential.

## **2. The Relationship between Online Courts, Digital Trade, and the SDGs**

In China, there are three Internet Courts (with the first one established in Hangzhou city in 2017; and subsequently in Beijing and Guangzhou since 2018) (Lin, 2021). In essence, they hear disputes that have an online element and resolve them entirely via digital means.

This article suggests that—with the adoption of two features (discussed in section 6)—ODR does not merely broaden access to justice. Rather, the large pool of disputes arising from the voluminous amount of online trade provides more opportunities for the Internet Courts to examine issues that touch on many other SDGs. The three Internet Courts together have already handled more than 350,000 cases since their establishment (Jing, 2022).<sup>2</sup> The Beijing Internet Court now deals with more than 30,000 cases per year (China, 2019a; China, 2022b).

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<sup>2</sup> In October 2019, they handled a total of 118,764 cases (China, 2019c). In August 2020, the number of resolved cases rose to around 200,000 (Cao, 2020). The point of these figures here is not only about the capacity of the online courts, but more importantly about the volume of contentious issues arisen from digital transactions every year. This is why—in order to facilitate digital trade and the SDGs—there needs to be an efficient ODR measure in place to address the numerous problems.



Given the wide variety of disputes that overlap with the SDGs, the Internet Courts have become a frequent and useful contributor to SDG policy developments. They have touched on, for instance, SDG 2 (food safety), 3 (public health), 4 (online education), 8 (equality), 9 (intellectual property and innovation), and 10 (employment). Their many contributions will be discussed in Section 4.

The point here is not to compare whether online or physical courts contribute more to the SDGs in terms of scale and significance. Instead, attention should be drawn to the powerful capacity of court-based ODR which stems from (1) the volume and a wide variety of online activities and disputes, and (2) the accessibility of online justice. The judgements—coupled with widespread news reporting—serve a signalling function for both the digital market order and sustainable development.

The relative ease of ODR—when compared to traditional physical courts—is more proportionate to the nature of online trade and investment. Cost and time are the most crucial criteria when choosing a suitable means of dispute resolution.

First, the fees for bringing up a case in the Chinese Internet Courts can be as low as RMB 50 (Knotts, 2019). As a result, it is not unrealistic to claim matters as small as toothpaste (CGTN, 2021). By contrast, for instance in India, Shah (2014) noted that the cost of using physical courts' services could be a barrier, as sometimes "the amounts involved are very meagre, usually a rupee or less, [making it] less economical to bring action ... This helps the erring traders to escape the wrath of [the] law and it encourages them and others like them to indulge in more such activities without being accountable to the law."

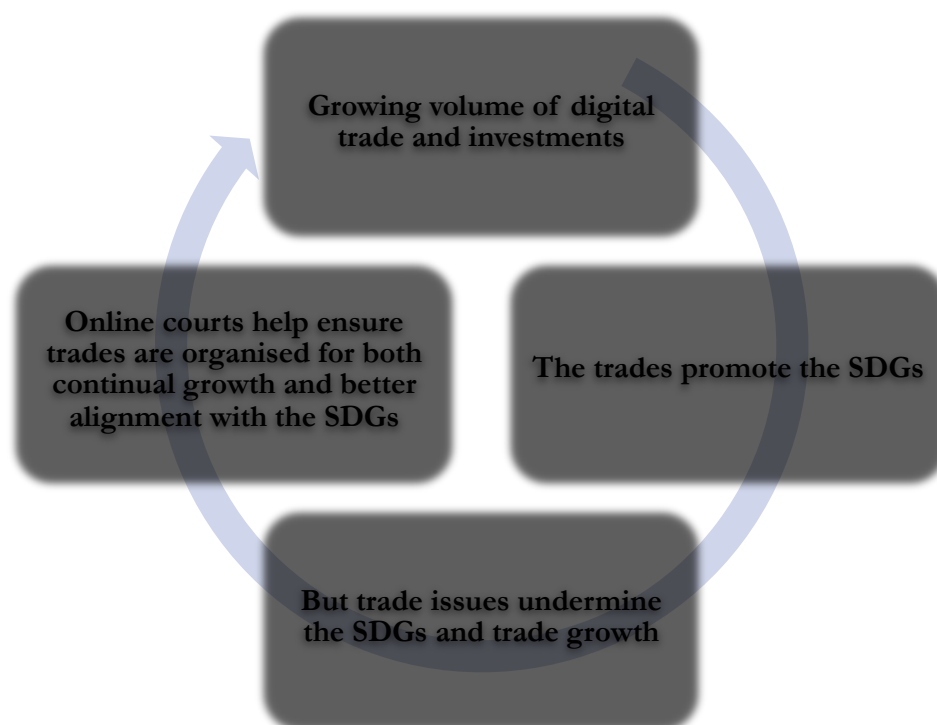
Second, Internet Courts provide a speedy litigation process that saves more than half of the time when compared to offline courts (Xinhua News, 2020). Through utilizing digital technologies like videoconferencing and AI-facilitated speech transcription, the procedures (e.g. trial) are fully online and paperless. For example, the filing of a claim can be done 24/7 on the online platform and takes about only 5 minutes (CGTN, 2021). Besides, the payment of court fees can be conveniently done online via a digital wallet (Giacalone and Salehi, 2022).

A technical point worth clarifying is that the policy value of the online courts does not depend on whether the online judgements constitute precedents (i.e. binding case law). This is because other public organs become informed—via the disputes in public courts—of the latest market developments and needs. Both the Internet Courts and other government branches can swiftly respond to issues and provide further guidance. For example, a groundbreaking ruling on regional discrimination made by the Internet Court (mentioned in section 4) was subsequently endorsed as a Model Case by the Supreme People's Court (China, 2022a). This means the higher-ups become better informed, and that Internet Courts are playing a constructive role in the public policy system.

Section 3 will first discuss, from the macro perspective, how online courts support digital trade by enhancing the sustainability of trade. Section 4 will then elaborate on how the courts are making positive progress for the SDGs individually.

### 3. Promoting the Sustainability of Digital Trade and Investment

Figure 1: The relationship between digital trade, SDGs, and online courts



Source: Author.

#### 3.1 Maintaining order in the digital marketplace for effective SDGs realisation

The volume of digital trade is huge and growing.<sup>3</sup> They promote the SDGs. But in general, digital trades are *private/commercial interests-oriented* which incidentally serve the SDGs.<sup>4</sup> Inevitably there will be occasional mishaps and problems (e.g. irresponsible commercial behaviour or market failures) which could undermine the SDGs.

<sup>3</sup> For example, Southeast Asia has reportedly the world's fastest growing online market with over 400 million Internet users. The overall market size has tripled in size in just four years to already US\$100 billion in 2019 (Australia, 2022).

<sup>4</sup> Sneirson (2021) suggested that "profit-driven firms may view sustainability and social responsibility primarily as a public relations matter, for particularly in consumer-focused industries social responsibility attracts customers and social irresponsibility repels them". Similarly, van Zanten and van Tulder (2021) took the view that "most companies adopt gradual strategies that slowly try to align with the SDGs, with far fewer companies creating transformative strategies that are more likely to secure long-term sustainability success. To illustrate, out of 1000 companies assessed by PwC, only 25% include the SDGs in their strategy, with just 14% mentioning specific SDG targets."

Besides, new technologies disrupt existing market norms and practices (UNCTAD, 2022). There are many new types of online products and services, such as online medical services (telemedicine) and online education. They give rise to unprecedented challenges such as online scams, the spreading of misinformation, and conducting unlicensed online businesses (Singapore, 2021). The risk of encountering defective or counterfeit goods online is also higher (OECD, 2019; New Zealand, 2022).

Compared to trades which are private interests-oriented, the online courts are public interests-oriented and have the mission of maintaining orderly development. The courts reduce the negative impacts of trade issues in two ways.

First, the judicial guidance—many of which are widely reported by the news—clarifies the “right and wrong” in the digital marketplace. This maintains order and steers stakeholders towards effective implementation of the SDGs.

Second, the court-based ODR mechanism instils accountability in the digital space. Companies and traders must factor in the risk of litigation. This aligns commercial interests and corporate goals closer with the SDGs.

Digital trades are in turn facilitated by clearer, more sophisticated rules and guidance. This, together with the following considerations, helps cultivate a sustainable cycle (see Figure 1: The relationship between digital trade, SDGs and online courts) that benefits trade and the SDGs.

### **3.2 Promoting consumer confidence**

Cybersecurity and inadequate consumer confidence are persistent barriers to digital trade (Australia, 2022; New Zealand, 2020; APEC, 2020). A Deloitte report suggests that “the ICT sector is viewed by many with distrust, often seen as the source of products and services that harm rather than heal our society and environment.” (Global Enabling Sustainability Initiative and Deloitte, 2019).

Consumer confidence does not come solely from a flourishing and convenient online business environment, but it also depends on the post-trade safeguards. The Department of Trade and Industry of the Philippines (2022) specifically emphasised that “in order to build consumer confidence in e-Commerce, there is a need to build a more efficient system of handling consumer complaints”.

A public sector-led or government-backed ODR system strengthens trust and order in the digital ecosystem. For example, the Internet Courts have stood up for consumers on data protection breaches, such as forced consent to the collection of user information (Gong and others, 2023), and the unauthorised sharing of personal information (Deng and Feng, 2020). These constitute civil infringements of personal data rights.

To promote digital trade, consumers' faith should not be limited to businesses of a specific size and type (e.g. multinational companies). SDG 8.3 specifically requires support for micro, small and medium-sized enterprises (MSMEs). They provide more affordable options like education and create employment opportunities (Smith and others, 2022; UN DESA, 2020).

However, if there is inadequate policy support for MSMEs, they cannot fully benefit from the bloom of digital trades. Micro-enterprises may be less financially stable (UN ESCAP, 2021; Lim and others, 2020). For example, in the Indonesian context, Mulhadi and Azam (2019) noted that SMEs face problems like "limited availability of funding sources for business development, low human resources ... lack of skill in mastering science and technology [and] the low legal awareness of SMEs to protect themselves and businesses with insurance."

Consumers may perceive these shortcomings negatively as providing fewer safeguards, and refrain from dealing with MSMEs as a result (Rizi and others, 2023). But the public Internet Courts can help ameliorate this. They have served as a protector for consumers and have for example dealt with cases involving unlicensed businesses (Yang, Lu and Chen, 2019).

Also, public sector involvement promotes trust and skills with ICT as per SDG 4.4. The online courts themselves are a demonstration of "the use of enabling technology, in particular information and communications technology" as required by SDG 17.8. The openness to technology in parts of Asia may not be as strong as in Europe and North America (Mondejar, Chu and Gogatz, 2021; Lai, 2020). For example, Suryanegara and others (2018) randomly surveyed "210 respondents from the 6 main islands, representing the whole Indonesian population at the 95% confidence level with a 7% margin of error." They observed that "Indonesian consumers [tend] to be reluctant or may refuse to use IoT technology that has not been tested (54.29%). Reluctance is also caused by a concern that private customer information and personal data may be revealed to others (15.24%). Another significant finding is that some portion (10%) of the respondents would reject a service that is not supported by the government."

#### **4. The Contributions to Both Digital Trade Issues and Individual SDGs**

The following illustrates the wide variety of digital trade issues that online courts have encountered. Resolving them advances the SDGs by making sure digital businesses act responsibly. They include bigger problems that affect many people; also, seemingly trivial matters that arise from daily-life transactions. As big problems often start small, they should not be precluded just because of their scale.

#### **4.1 SDG 1.4: Strengthening access to finance**

The digitalisation of the financial sector has broadened access to finance. Loans can now be obtained virtually with a mobile phone amidst the rise of fintech and virtual banks in Asia Pacific (Hu and Tang, 2020; Chiang, 2023). However, the financial sector has to be carefully regulated to protect both the financial providers and users (Claessens, 2018; and for the Indian context, see Mihindukulasuriya, 2022). This is essential to maintain the sustainable provision of finance.

The Internet Courts accept cases involving loan contracts signed online. In particular, many digital loans involve smaller amounts, and ODR would be the more proportionate means (in terms of cost, ease and time) of resolution than traditional courts. They help support SDG 1.4 on ensuring proper access to financial services to the “vulnerable”.

The Hangzhou Internet Court noticed that predatory online loan providers have targeted young people with little social experience (Gill, 2021). The Guangzhou Internet Court reported a case where the victim contested the need to repay an online loan taken without her consent by using her lost identity card (People’s Courts News, 2021a). These kinds of incidents against the vulnerable, if left unaddressed, will undermine trust and order in the digital financial sector. This is an important matter for SDG 1 as digital finance helps alleviate poverty in China (Chen and Zhai, 2021).

#### **4.2 SDG 2: Food safety**

The Internet Courts have been able to contribute significantly to food safety issues, due to the enormous amount of online food sales (China, 2019b). In 2019, more than 70% of B2C disputes involved food and supplements (Zhong and Shan, 2019). SDG 2.1 entails access to safe food, and the courts serve as gatekeepers.

The courts have dealt with cases involving online food sales without a license (Yang, Lu and Chen, 2019), and improper food information labelling (People’s Courts News, 2021b). The Guangzhou Internet Court ordered a refund in a case where the seller wrongfully sold milk powder produced in Saitama, Japan (Wu, 2020). This is because China has banned the import of certain food products from that region in light of the risk of radiation contamination (Martina and Wee, 2011).

But the most noteworthy observation is the expansive coverage of the types of online food sales. It does not merely include doing groceries online, but it also extends to the food issues arising from ordering restaurant takeaway/delivery via smartphone applications (Liu, 2022). The latter falls within the court’s jurisdiction because it has a digital element.

To promote digital food trade, ODR is needed to cater to the popularity of online food shopping.

### **4.3 SDG 3: Public health**

In terms of medical supplies, the courts have strengthened public health by sanctioning the online sale of sub-quality facial masks (Au, 2020). This underpins SDG 3.d.

Academics have recognised that “safe Internet use is an emerging public health issue” (Tsimtsiou and others, 2017). The World Health Organization suggests adopting a public health approach to addressing online harm (including online harassment, violence and sexual crimes) against children, which are considered “some of the most pressing and challenging public health problems” (World Health Organization, 2022). The digital space has become an indispensable part of our lives, and these problems can affect the mental health of youths and children. The courts play an especially salient role in ensuring healthy and safe usage of the Internet by youngsters. For example, there was a case where a minor was exposed to inappropriate content on a fee-paying online comic platform (China, 2023). The comic subscription payments, made by the minor without her parents knowing, were refunded because the content should not have been accessed by minors. Notably, the Beijing Internet Court utilised this opportunity to go “the extra mile” to recommend the comic platform to strengthen protection for minors (China, 2022c).

The regulation of online food sales mentioned above is also closely related to public health. In addition to food, the courts help regulate the sale of health supplements and Chinese medicine (e.g. over-the-counter). For instance, there was a case where a consumer complained about the wrongful use of prohibited additives in a weight-loss product (Li, 2019).

Online medical services, such as telemedicine, are covered. As reported by China Central Television (2023), the Beijing Internet Court has already dealt with many cases involving digital healthcare, for example:

- where doctors sued an online health platform for providing online consultations in their names without their consent: i.e. impersonation for profit.
- where an online platform wrongly provided telemedicine services. The Court explained that the provision of general health information is different from telemedicine, as the latter is subject to licensing requirements.

Building trust in this contemporary type of remote service can broaden access to healthcare. It promotes technological innovation in this industry (SDG 9.b).

### **4.4 SDG 4: Regulating online education and training**

The online courts help ensure the healthy development of the online education sector, which matters to SDG 4 on quality education. The number of disputes heard by the Guangzhou Internet Court involving online education substantially increased from 3

cases in 2019 to more than 160 cases in 2021 (Wu, 2021). Various issues have been addressed, such as misrepresentation of the course convener's experience.

The judicial protection for online learners is conducive to SDG 4 in terms of building trust and confidence in this emerging sector, especially for those who are wary of newer forms of learning as opposed to traditional classroom-based mode. Creating a trustworthy learning environment improves access to education, as required by SDG 4.3.

The benefits extend also to SDG 4.4 on technical and vocational upskilling, as many undertake online courses on professional training.

#### **4.5 SDGs 8, 10, 16.b: Employment and equality**

The Hangzhou Internet Court was reportedly the nation's first to encounter a case where the plaintiff was discriminated against in the online employment context based on her regional origin (Cai, 2019). The judicial condemnation of regional discrimination upheld SDGs 10.2 (on social and economic inclusion irrespective of status) and 10.4 (on equality). It also bolsters employment and labour rights for SDGs 8.5 and 8.8.

This reinforces how the volume of digital trade and disputes provides more opportunities for the public sector to examine issues that have an impact on the SDGs. At the same time, the ease of making an ODR claim plays a key role in broadening the case pool.

#### **4.6 SDG 9: Supporting technological innovation**

The specialised function of handling digital affairs allows the courts to encounter many cutting-edge, fast-developing issues involving technology and intellectual property (Zheng, 2020). For instance, the Hangzhou Internet Court was the first in the nation to deal with a case on non-fungible tokens (NFT) copyright infringement (Pattloch, 2022). The protection of intellectual property rights is a requisite for SDGs 9.1 and 9.b on promoting innovation and technological development.

Notably, the case proceeded even though the damages claimed in that case were of a relatively small amount (RMB 4000) (Shen and Jiang, 2022). The digital marketplace has provided more business opportunities for smaller art creators, tech innovators and entrepreneurs. The courts provide them with a cost-proportionate means for protecting their digital businesses.

#### **4.7 SDGs 8.4, 11.6, 11.a: Supplementing the environmental effort of digital trade**

If the voluminous trade disputes are to be resolved in physical courts, it could mean excessive paper consumption in the form of paper court documents.<sup>5</sup>

Digital trades have already moved towards a low-carbon and paperless mode (International Chamber of Commerce, 2022). Using a lot of paper in courts will, ironically, undermine the environmental progression of digital trades. After all, post-trade dispute resolution is an inseparable part of digital trade, so the carbon footprint of the post-trade stage is equally worthy of attention. Green litigation would be the proper response to the volume of digital trades.

The Internet Courts in China have been contributing significantly to the environment. ODR not only reduces paper consumption but also limits the carbon footprint from travelling. The Beijing Internet Court alone has saved travel distance of 44.13 million kilometres and 133 storeys worth of papers between 2018 and 2020 (Xiao and Xue, 2020). The Hangzhou Internet Court saves more than 300,000 papers each year (Wu, 2019). Put differently, had the Internet Courts not been introduced, digital trades would have been incurring at least 300,000 additional paper usages annually.

#### **4.8 SDG 15: Protecting the ecosystem and wildlife**

SDG 15.7 explicitly requires the sanctioning of illegal wildlife trades. Many of such illicit trades take place online. Such activities pose a serious threat to the environment (e.g. via illegal logging) and biodiversity (Coke-Hamilton and Hardy, 2019).

Online courts play a crucial role in preventing these harmful activities, thereby fulfilling the state's obligations to protect under SDG 15.5. In a 2021 case, the relevant government authority initiated a successful civil public interest litigation in the Hangzhou Internet Court against the online sale of a protected species (tortoise) (Jiang, 2021). In China, "civil public interest litigation" is a means of seeking civil (as opposed to criminal) remedies, such as compensation. It can be initiated by the authority, consumer organisation or qualified citizen group, concerning consumer or environmental issues that harm public interests (Han, 2017). On the facts of the case, the defendants were already sanctioned criminally by another traditional court (imprisonment and a total 350,000 RMB fine). They were additionally held liable for civil compensation by the Internet Court (about 30,000 RMB).

Court-based ODR is important for SDG 15 in two ways. First, it provides an extra means of addressing illicit trades. In Asia-Pacific, these activities have transited to the online arena (Fallin, 2021). Online users can help monitor and deter such acts by

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<sup>5</sup> The excessive use of paper in courts has been complained in certain Asian-Pacific jurisdictions. See Suryam (2022) for the Indian situation.



reporting the matter. In turn, the public authority, on citizens' behalf, can raise a "civil public interest litigation" in the Internet Courts.

Second, the existence of criminal sanctions by other courts does not overlap with the scope (civil jurisdiction) of the Internet courts. Criminal and civil liabilities represent different normative roles. The defendants who have committed such wrongs should be held separately accountable to the state (in criminal terms) and the public (in civil terms). The Internet Court in the 2021 tortoise case rightly said that the public also has a legitimate interest in biodiversity and the natural environment and should be compensated by the civil remedy. The stringency of legal liabilities reinforces SDG 15.

## **5. Constructing the "Digital Rule of Law" for the Digital Marketplace and SDG**

### **5.1 Reinforcing the rules-based culture in the digital marketplace**

Online courts do not merely enhance access to justice and promote the rule of law as required by SDG 16.3. But more importantly, the ODR system represents and cultivates the "digital rule of law". The digital/online rule of law means that, even in the digital marketplace—where everything occurs virtually which could reduce the sense of accountability due to the lack of direct contact—the rules-based order is still in place and intact. Upholding a rules-based order *nationally* has profound symbolic implications for society. This is a positive start, as ultimately SDG 17.10 expects a rules-based order in *international* trade.

### **5.2 Digitalisation of the judiciary: Providing user convenience and building up judicial expertise**

Another limb of the digital rule of law is that justice should be accessible and capable of meeting the needs (in terms of cost and time as explained in Section 2) of digital trades.

But cost and time are not the only considerations for promoting e-commerce. During the COVID-19 pandemic, physical transactions and trades are affected due to reasons like travel restrictions and health considerations (United States, 2021). In the same vein, the pandemic deters physical attendance of courts. For example, Hironaka (2021) reported the 2020 situation where the Japanese courts "limited open hearings to only every other week; the capacity was reduced, and a backlog of cases piled up". However, digital trades, especially concerning online services, have thrived amidst the pandemic (Zaman, 2022).

The rule of law is not in full operation if digital trade activities continue but in the absence of an online, post-trade dispute resolution mechanism. The pandemic is a reminder that physical courts alone are not always adequate to cater for the actual needs of online users.

Besides, a strong digital rule of law would suggest that the judiciary, as part of public governance, is well-versed in digital developments and their specific needs (Oldfather, 2012; Zygmunt, 2022). There are many cutting-edge issues in the digital marketplace—such as the commercial application of blockchain and algorithms—which require a lot of expertise and experience to understand.<sup>6</sup> The developments in this area are particularly fast-paced, so it is sensible to introduce the court-based ODR to train specialised judges early on. Even though there may be technical challenges when first introducing such a system, policymakers should bear in mind the longer-term and structural benefits.

## **6. Policy Insights: Distilling the two important features of ODR**

There are two policy insights for designing an ODR system. Without these two features, ODR itself will not necessarily contribute to the SDGs as much as the Chinese Internet Courts do.

### **6.1 The choices of suitable dispute resolution mechanisms for e-commerce**

Before discussing the two policy insights, it is helpful to start with the possible choices of dispute resolution mechanisms. Conceptually, there are four of them, namely (1) alternative dispute resolution (ADR) (e.g. arbitration), (2) offline courts, (3) conventional courts that are tech/ICT-enabled, and (4) fully online courts specialised in digital disputes. The Chinese Internet Courts belong to the last category, as their “basic principle” is that “the whole process is online” (Guo, 2021).

The goal here is not to identify the “best” choice. Each of them can be the more suitable means depending on the circumstances. Digital trades and investments involve a wide variety of transactions. Sometimes the parties prefer an in-person, offline setting. At the same time, some contracts may involve parties who cannot realistically travel. Thus, a *fully* online option is a useful alternative.

ICT-enabled courts are not necessarily capable of providing a fully online experience for various reasons. In-person attendance is a long-established judicial tradition, and often the default practice even when virtual alternatives are available. For example, Kwan (2021) discussed the situation of the Hong Kong Special Administrative Region,

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<sup>6</sup> Academics and lawyers have encountered some difficulty with ascertaining the legal property nature of crypto assets. For example, see Chan (2023).

where some judges insist on assessing witnesses in person in the solemn courtroom atmosphere, even during the pandemic.

For another example, Indonesia—which is already considered one of the foremost among ASEAN members in adopting digital technologies in courts—currently offers “e-court” services (Nguyen and Truong, 2022). Whilst most of the judicial process (e.g. filing of claims and pleadings) can be done online, there remain some procedures that still require in-person attendance (Nguyen and Truong, 2022; Nurjihad and Ariyanto, 2021; Sulaiman, 2021). Some judicial staff and lawyers are still reluctant to transition from conventional means to using new technologies due to a lack of familiarity (Nguyen and Truong, 2022). This is why Section 3 emphasises that specialised online courts can (1) serve as a role model of public-led digital transformation and (2) promote openness to new technologies.

The fast-changing market will benefit from a judiciary which has strong expertise in digital matters. A specialised court also conveniently signals to the market about its specific use and capability.

## **6.2 The first takeaway: Supplementing ADR with court-based ODR**

Court-based ODR and non-court-based ODR (i.e. ADR) are not mutually exclusive. For example, online ADR is a useful option for some consumers and businesses for reasons like confidentiality, something that cannot be achieved by courts which uphold open justice. In the same vein, the below will explain that there are functions which can, in general, only be served by online courts. The courts, as a form of public intervention, provide post-trade support (i.e. dispute resolution) and pre-trade guidance (through clarifying the law and obligations). Therefore, ADR and online courts supplement each other in satisfying the highly varied needs of the digital marketplace.

First, policymakers should appreciate how the large amount of digital trade constitutes an invaluable case pool, often with groundbreaking issues. This pool can be accumulated by introducing a court-based ODR system either nationally or regionally (e.g. within ASEAN). This does not necessarily mean creating a new judicial system from scratch. Instead, traditional physical courts can offer ODR tracks for certain types of disputes, especially when the pandemic has already accelerated the adoption of communication technologies (Sternlight and Robbennolt, 2022).

Whilst the Chinese ODR approach is court-based, the predominant means chosen by ASEAN<sup>7</sup> and the EU<sup>8</sup> in response to surging online trades is ADR in the form of, e.g.,

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<sup>7</sup> See ASEAN Guidelines on Online Dispute Resolution (ODR) (ASEAN Secretariat, 2022).

<sup>8</sup> European Commission, Online Dispute Resolution database. Available from <https://ec.europa.eu/consumers/odr/main/?event=main.home.howitworks>. To put it differently, the European Online Dispute Resolution System receives 2,000 cases each month (European Commission, 2017). Many of which could be of high policy or precedential value but cannot be reaped due to confidentiality.

mediation. ADR, by definition, means out-of-court settlement.<sup>9</sup> However, the public court-based system arguably contributes more to the SDGs than ADR. The former quickly informs other governmental organs and the public of the latest issues, and further policy actions can be accordingly taken whereas the issues and outcomes in ADR-based ODR remain private and confidential amongst the parties. For instance, the APEC ODR Collaborative Framework has four ADR service providers which all *must* uphold confidentiality for their users (APEC Economic Committee, 2023). In other words, ADR-based ODR does not lead to public guidance (in the form of open judgements) that could inform the digital marketplace and guide businesses towards proper SDG developments.

Indonesia, the Philippines, and Thailand are reportedly the only ASEAN member states that have introduced a national ODR system (ASEAN, 2022). That said, the national ODR system in the Philippines is ADR-based (Philippines, 2020). The same holds for Thailand, where their ODR mechanism for intellectual property disputes is ADR-based (Thailand, 2020), and so is the one launched for consumer disputes (ASEAN, 2020). For Indonesia, there is no specialised ODR agency (Konsumencerdas.id, 2022)), though traditional courts can serve as e-courts and offer ODR services (Nikam and Nongthombam, 2022).

Even for jurisdictions which have already established an ADR-based system, the Chinese insights on the court-based system are still relevant. This is because the ASEAN Guidelines on Online Dispute Resolution recommends primarily an ADR-based national mechanism, but it explicitly leaves open the policy choice of “connecting the ODR system to...e-courts” (ASEAN Secretariat, 2022). Policymakers should utilise this flexibility.

### **6.3 The second takeaway: Expanding the scope of disputes that can be resolved through ODR**

The second policy takeaway is that introducing a court-based ODR itself is not enough to reap the spillover benefits brought by e-commerce to the SDGs. It is important to broadly define the scope of jurisdiction (i.e. types of digital disputes that will be entertained) for the ODR system.

Existing ODR mechanisms in other jurisdictions have a narrower scope. The ASEAN Guidelines on Online Dispute Resolution focuses only on consumer disputes (ASEAN Secretariat, 2022). Another ODR initiative, the APEC Collaborative Framework on Online Dispute Resolution, caters only for business-to-business disputes (APEC, 2022). The European Commission’s Online Dispute Resolution platform only deals with disputes between consumers and traders.<sup>10</sup> The European platform also explicitly

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<sup>9</sup> European Commission, “What is alternative dispute resolution?”, Online Dispute Resolution database. Available from <https://ec.europa.eu/consumers/odr/main/?event=main.help.new>.

<sup>10</sup> European Commission, “Who can use this site?”, Online Dispute Resolution database. Available from <https://ec.europa.eu/consumers/odr/main/?event=main.help.new>.

excludes disputes involving healthcare services.<sup>11</sup> This contrasts with the Chinese Internet Courts which can handle such cases, as noted in section 4.7 above.

The Internet Courts in China can contribute to various SDG areas because their jurisdiction is defined very widely to include any disputes that have a *digital element*. This includes the most obvious, such as consumer disputes arising from online transactions and e-contracts between businesses.<sup>12</sup> In gist, for contracts involving goods, the Internet Courts can deal with it if it is *formed* online, for example when a consumer orders a defective product online. Whereas for contracts involving services, a complainant can sue at the Internet Courts if it is *performed* online.

But most notably, the jurisdiction of the Internet Courts is not just about business contracts and does not require such contractual existence as a precondition to instigate a claim. On top of including online violation of intellectual property rights, it covers any “internet violations of others’ rights in their persons or property or other civil rights and interests”.<sup>13</sup> These categories do not have to directly involve any B2B or B2C transactions. They provide the room for defending more SDGs-related rights, such as employment discrimination (which in turn touches on SDG 8 on decent work; and SDGs 5 and 10 on equality). For example, in the case discussed above on regional discrimination, the complainant applied for a job through a job-seeking app. The company assessed and rejected the application online based on the discriminatory cause. In this sense, despite there being no employment contract formed, it was an “Internet violation” of her civil right and this fell within the Court’s jurisdiction.

The ASEAN, APEC, and EU initiatives—which are ADR-based and cover only B2B or B2C situations—are positive starting points. However, a more ambitious, progressive expansion of the scope of ODR can be considered for the benefit of implementing the SDGs.

## 7. Conclusion

Many Asian-Pacific countries have taken a strong interest in the Chinese Internet Courts, and the ASEAN report on ODR (2020) has enthusiastically described the Chinese model as a “successful” one for reference. This study would be particularly interesting as it is the first to study the relationship between online courts, digital trade, and the SDGs.

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<sup>11</sup> European Commission, Which disputes can’t I use this site for?”, Online Dispute Resolution database. Available from <https://ec.europa.eu/consumers/odr/main/?event=main.help.new>.

<sup>12</sup> China, The Supreme People’s Court’s Provisions on Several Issues Related to Trial of Cases by the Internet Courts (2018) (translation by China Law Translate, available from <https://www.chinalawtranslate.com/en/the-supreme-peoples-courts-provisions-on-several-issues-related-to-trial-of-cases-by-the-internet-courts/>). See also Sang (2021).

<sup>13</sup> Ibid.

Introducing a court-based ODR mechanism helps fully unleash the potential of digital trade and investment for sustainable development. The policy focus should not only be placed on the relationship between trade and SDGs. However, it is necessary to also pay attention to the macro issue of the sustainability of the digital trade process itself. Trades will not automatically be perfect and smooth, and many issues could hamper both the trade process itself and the SDGs. The more sustainable the trade process becomes, the more and longer they can contribute to the SDGs. Public sector leadership is essential for supporting the private sector in the realization of the SDGs, and the court-based ODR is a proactive form of such leadership. It usefully contributes to the sustainability of the digital trade process by resolving trade issues and reinforcing trust and confidence in the digital marketplace.

On top of that, policymakers should bear in mind that trade facilitation laws and regulations alone are not adequate. Rules and regulations belong to *ex ante* (preventive) measures; whilst the courts serve the *ex post* (deterrent) function (Posner, 2010).

Policymakers should also consider the profound benefits of the court-based ODR in aligning trades with the SDGs. The Chinese model has demonstrated how it can effectively resolve trade problems to the benefit of various SDGs. ADR-based ODR (such as private arbitration) cannot fulfil the same function as court-based ODR, as the latter more closely engages the public sector in the SDG process. Therefore, policymakers should consider having both—which complement each other—to cater for the highly varied market needs and the fast-paced market developments.

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