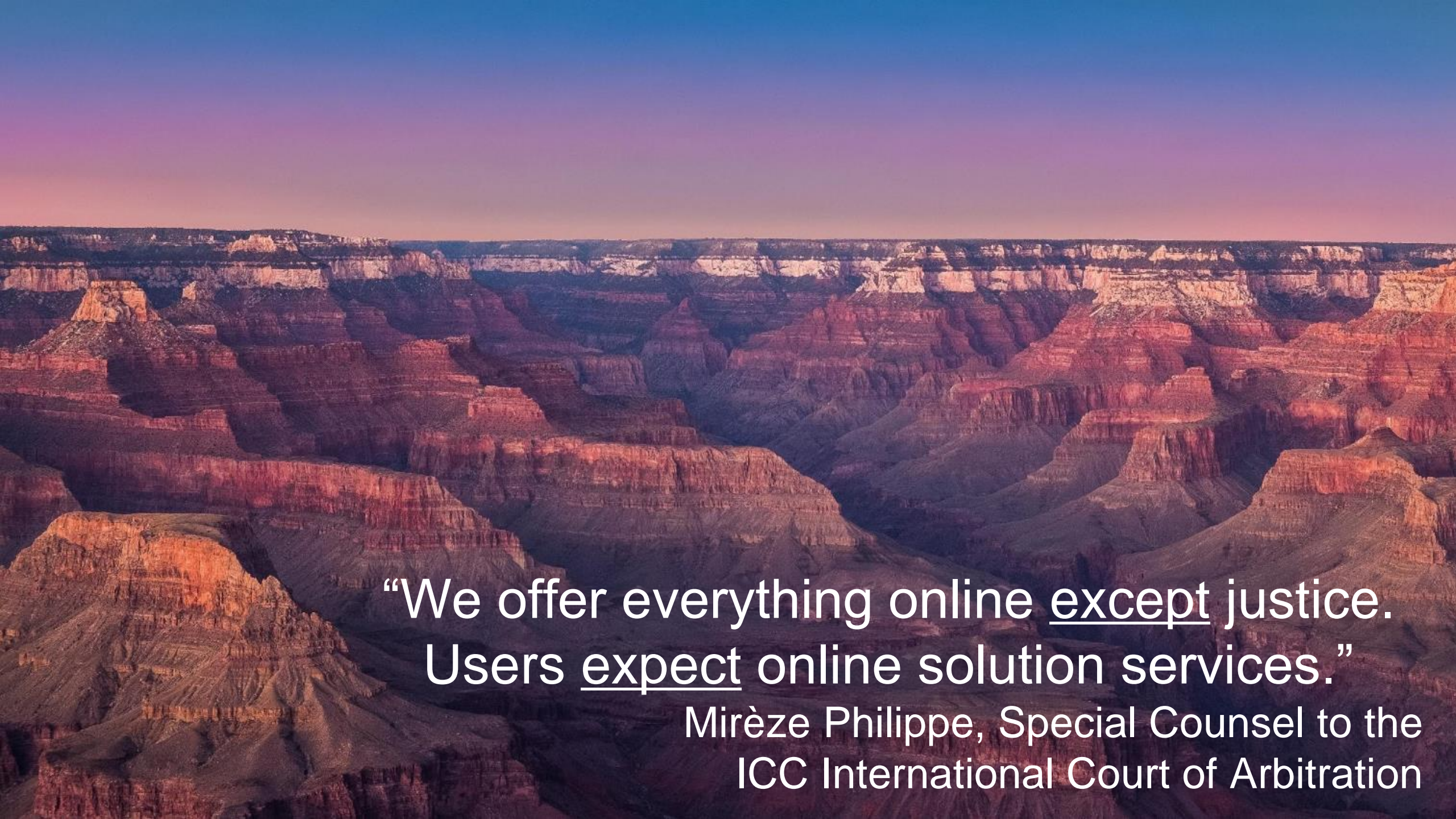


Online Dispute Resolution and Ethical Considerations

STANDARDS, GUARD RAILS, AND PRINCIPLES

Who Decides What They Should Be, What Do They Provide, and How to Enforce Them?



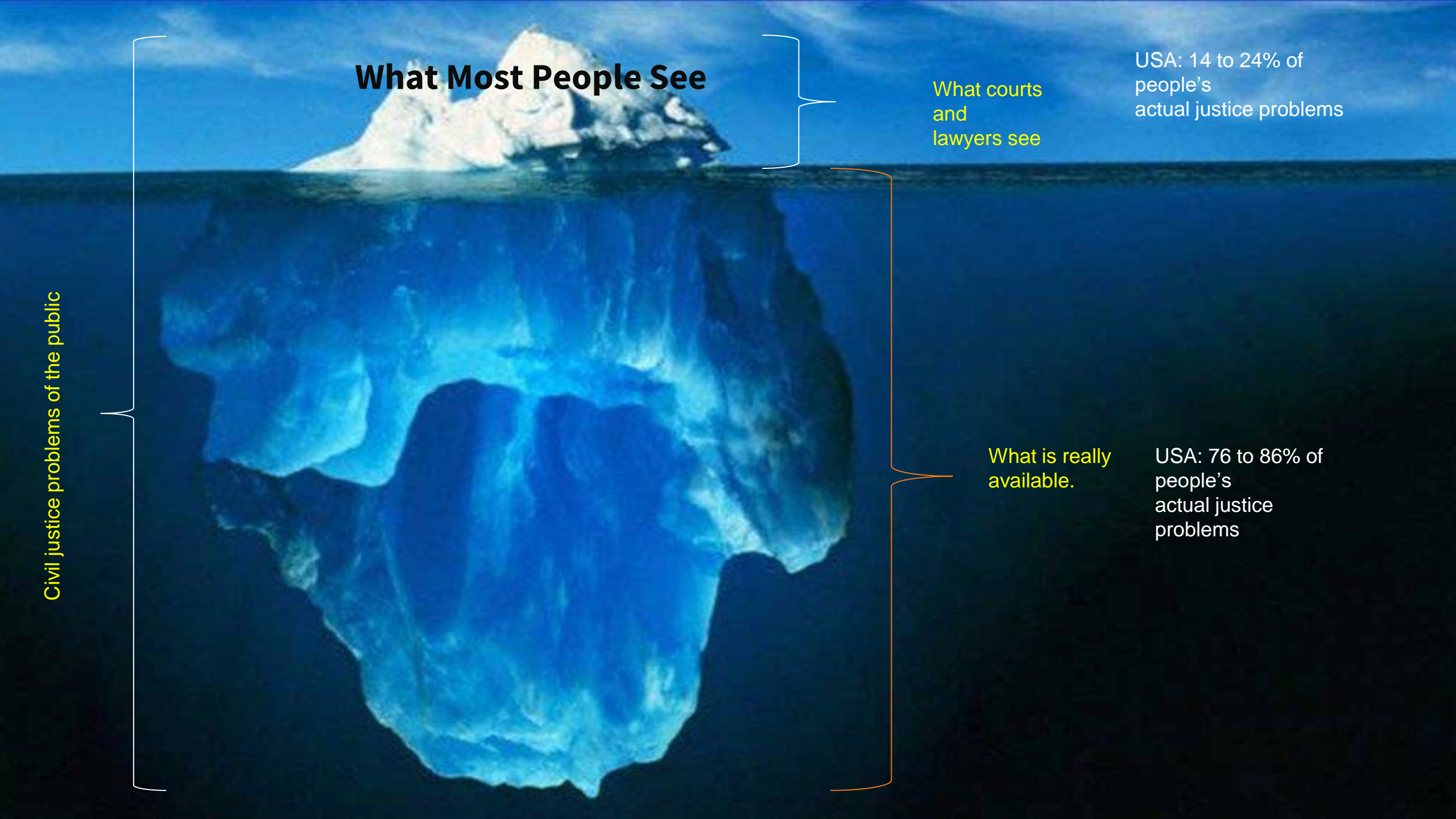
“We offer everything online except justice.
Users expect online solution services.”

Mirèze Philippe, Special Counsel to the
ICC International Court of Arbitration

If the public expects on line services, should it just be 'buyer beware'?

Or should providers, professional associations and regulators recommend and promulgate standards, principles, and guard rails?





What Most People See

What courts
and
lawyers see

USA: 14 to 24% of
people's
actual justice problems

Civil justice problems of the public

What is really
available.

USA: 76 to 86% of
people's
actual justice
problems

STANDARDS NOT NEW TO THE WORLD OF ADR-

- Regulation of private online commerce began in the 1990s;
- European Union and U.S. Government statement in 2000-
Access to fair and effective ADR, especially if provided online (can) increase confidence in cross border electronic commerce and...reduce the need for legal action
- Requirement that online business provide some means of DR for B2B and B2C;
- Report of ABA Task Force on Electronic Commerce and ADR in 2002;
- Creation of a ‘Recommended Best Practices’ for ODR providers, not Standards or a ‘Code of Conduct’;
- United Nations Commission on International Trade Law (UNCITRAL) Produced Technical Notes on ODR in 2017.

Who Has Tried?

- Civil Justice Council-ADR Advisory Group (2015-UK)
- UN Commission on International Trade Law- ODR Technical Notes
- International Council for ODR
- National Center for Technology and Dispute Resolution (NCTDR)
- ABA: Recommended Best Practices for E-Commerce and ADR (2002-still cited)
- ABA: Commission on the Future of Legal Services
- ODR:10 Lessons on Access to Justice by Roger Smith
- Self-Represented Litigant Network - Joint Technology Committee
- International Institute for Conflict Prevention & Resolution
- Asia Pacific Economic Cooperation
- Blue Print for Online Dispute Resolution by Prof. Amy Schmitz, Missouri

What Are the Most Common Standards?

- Most common
- Number of times mentioned

Accessible	11
Fairness	8
Informed	7
Security	7
Transparency	7
Accountability	6
Legal	6
Speedy/Efficient	6
Affordable	5
Competence	5
Third Party Neutral & Ethical Guidelines / Code of Conduct	5
Confidentiality	4
Evaluation	4
Legal Information / Connection to Portals	4
Neutrality / Independence	4
Protection from Harm	4
Trustworthy	4

UNCITRAL (United Nations Commission on International Trade Law) Technical Notes

- Foster development of ODR in disputes involving cross border, low-value sales;
- Recognize that traditional judicial mechanisms for legal recourse may be inadequate for cross border e-commerce disputes;
- ODR should be
 - Simple
 - Fast
 - Efficient
 - Not impose costs
 - Avoid Delays
 - Should not be disproportionate to the value of the dispute

Asia Pacific Economic Cooperation Statement

The time is now to create an APEC ODR legal framework that benefits businesses and individuals across the region.

ODR e-justice is an essential component of economic growth. Use of ODR promises access to commercial justice, with tailored procedures that bring down costs, delays and burdens in proportion to the economic value at stake. It makes transactions more efficient, reduces risk and boosts small business competitiveness by lowering costs for both buyers and sellers.

National Center for Technology and DR Principles

Accessibility

Accountability

Competence (relevant dispute resolution, legal, and technical knowledge; languages; and culture)

Confidentiality

Empowerment

Equality

Fairness (designed and implemented to facilitate and uphold due process, without bias or benefits for or against anyone, including those based on algorithms. Responsive to and reflective of the communities and stakeholders they serve).

Honesty

Impartiality (commitment to reducing bias in the delivery of the process).

National Center, Principles, cont.

Informed Participation

Innovation (continuous innovation to improve the delivery of dispute resolution services and benefits more fairly, effectively, and efficiently in ways that increase access to justice.)

Integration

Legal Obligation (uphold the laws of relevant jurisdictions and ensure that relevant laws are known and followed)

Neutrality

Protection from Harm

Security

Transparency

National Center for Technology and Dispute Resolution; Leah Wing, lead author, 2016, and for the ABA Center for Pro Bono, 2018, with input from Professor Amy Schmitz

The Civil Justice Council-ODR Advisory Group (2015) UK

- Accessible- Especially for those with physical disabilities when attendance in court is almost or is impossible.
- Speedy-To minimize period of uncertainty for unresolved problem.
- Affordable- For everyone, regardless of means.
- Trustworthy- Users confident of forum's honesty and reliability.
- Consistent- A degree of predictability.
- Appropriate- For an increasingly online society.
- Avoidable- Alternative service in place and a judge is the 'last resort'.
- Focused- Judges only called upon if their experience/knowledge truly required.
- Intelligible- SRL can easily use and not feel disadvantaged.
- Proportionate- Cost of claim relative to cost of process.

Who Is ICODR?

ICODR is an international **nonprofit**, incorporated in the United States, that drives the development, convergence, and adoption of open standards for the global effort to resolve disputes and conflicts using information and communications technology.

What is ICODR Doing?

The ICODR board has green-lighted the creation of four subcommittees focused on Standards, Governance, Membership, and Training/education.

- Standards - drafting and updating ICODR's standards of practice by vertical (e.g. courts, ecommerce) and for different actors (e.g. sole practitioners, ODR platform providers, machine learning systems, etc.).
- Training/education – drafting and updating ICODR standards for ODR training (cooperatively with the Standards subcommittee), promoting best practices, sharing curricular components and ODR scenarios.
- Upon completion of certain trainings offered by ICODR, they provide attendees with a certificate.

What is the ABA and the Section of Dispute Resolution?

The American Bar Association is a nonprofit, voluntary, professional association of lawyers, associates, law student, and other legal professionals. It has no role in the licensing or certification of lawyers or dispute neutrals but does provide an accreditation role with regard to law schools and offers ratings of federal bench nominees. It is often called on by the branches of government to offer commentary or expertise on certain issues but its opinions, policies, recommendations, reports, and standards are not binding on members of the legal profession.

The Section of Dispute Resolution is a part of the ABA with a separate governance structure and bylaws but has no authority to act outside the purview of the ABA.

What Are They Doing?

- Task Force mission/charge: To study and report regarding:
 - Current and emerging uses of ODR in the public and private sectors (including in the courts);
 - Existing and suggested statutes, rules, principles and standards regarding ODR platforms and practice; and
 - Ways that the DR Section's credibility, expertise and thought leadership might advance the availability, use and quality of ODR.
- This will include assessing the feasibility and efficacy of the Section adopting, endorsing or promulgating best practices, guidelines, or standards for court ODR programs.

The InternetBar.Organization

IBO is a multidisciplinary professional organization that

- Brings together people and institutions on the Internet
- In trusted online communities
- To develop the normative behavior which will govern main relationships
- And affect the well-being of people and society across the globe.
- Offers training and certifications for ODR
- Builds ODR into programs it develops, designs and implements.

How Does IBO Promote Standards?

- IBO offers a 16 hour online ODR training program that provides attendees with certifications of competence in an online dispute resolution ecosystem.

What is Next? Discussion.

- How do you believe ODR should be regulated, if at all?
- Should there be a top-down or bottom-up approach?
- Is one global system practical or “doable” – why or why not?
- Should nonprofit associations be leading the way or should there be government regulation, and if so, at what level?
- What should consumers and end users expect from the use of ODR providers and platforms?