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| Institution: Queen Mary University of London (QMUL) |
| Unit of Assessment: C20 (Law) |
| Title of case study: Cross-border internet dispute resolution |
| <p>1. Summary of the impact</p> <p>Prof Hörnle's research into Online Dispute Resolution has had a clear impact in government policies and the drafting of legislation at international level (UNCITRAL, Organization of American States (OAS)), EU level and UK level. ODR is an extremely new field (only 10-12 years' old) and there is little expertise in the area among lawyers, government and other policymakers. The underpinning research in this case examines how cross-border commercial and consumer disputes can be solved using internet technology as an alternative to national courts. Building on existing research on Alternative Dispute Resolution (ADR), the research examined how ADR can be applied specifically in an online context and has had a significant impact on legal practitioners, policy makers and governments. This is a new field of research, and the work has been used by the European Commission to draft the first European legislation on Online Dispute Resolution (ODR) and has informed the approach taken by policy-makers in the UK to implementing this legislation. It has also critically shaped the discussion of ODR in international, regional and national organisations.</p> |
| <p>2. Underpinning research</p> <p>The research has been carried out by Prof Julia Hörnle at the Centre for Commercial Law Studies (CCLS) at Queen Mary University of London (2000–present). The research describes how internet technology has the potential to make the resolution of cross-border disputes involving businesses, their suppliers and partners and consumers fairer, more effective and less costly. Cross-border dispute resolution using national courts is expensive and slow, in particular because national laws often require complex or lengthy preliminary applications to determine the competence of the courts involved. As a result there is often no access to justice for consumers and small to medium-size enterprises involved in these disputes. ODR can mitigate these issues, using internet connectivity and systems such as online case management tools, secure videoconferencing, web-forms and web filing platforms to enable disputes to be managed via the world wide web. All of these make scheduling mediation and arbitration sessions, managing documentation, and running cases much more straightforward for participants and legal practitioners.</p> <p>Prof Hörnle's research, culminating in her 2009 book [1] examined the standards to make ODR a fair dispute resolution process, focusing on due process and the differences from offline processes such as arbitration and mediation. The outcome of the research was to set out the fairness standards with which ODR should comply, to show how these standards can be implemented in the real world thus providing a blueprint of how ODR should be devised to solve disputes such as business to consumer e-commerce disputes, where the business and the consumer are based in different countries.</p> <p>Other work has focused on specific issues raised by ODR. Early work looked at how ODR could work for consumers [2] who are often relatively powerless when involved in disputes with large organisations, and research the following year analysed legal issues raised by ODR – in particular whether arbitration law and practices needed to be changed to accommodate it [3].</p> <p>In 2008, Hörnle examined domain name dispute resolution as a specific case study of ODR [4]. The case study used the large amount of publicly-available data on these cases to examine whether ODR was fair as well as efficient. Other work in 2008, carried out with Niall Lawless of the Chartered Institute of Arbitrators on behalf of the EU-China Information Society, investigated how ODR could be implemented in China [5], and work in 2013 looked at UNCITRAL's (United Nations Commission on International Trade Law) Proposals in the field of ODR, comparing those with the EU Proposals [6].</p> |

3. References to the research (indicative maximum of six references)

1. Hörnle, J (2009) *Cross-border Internet Dispute Resolution*, Cambridge University Press, ISBN 978-0-521-89620-7.
2. Hörnle, J (2002) 'Online Dispute Resolution in Business to Consumer E-commerce Transactions', *Journal of Information Law Technology* 2002 (2). Peer-reviewed online journal.
3. Hörnle, J (2003), 'Online Dispute Resolution', Chapter 12 in Tackaberry, Marriott, Wood (eds.) *Bernstein's Handbook of Arbitration Law & Practice*, Sweet & Maxwell, pp.781-835.
4. Hörnle, J (2008), 'The Uniform Domain Name Dispute Resolution Procedure: is too much of a good thing a bad thing?' *SMU Science and Technology Law Review* 11, Summer 2008, pp.253-289.
5. Hörnle, J (2013), 'Encouraging Online Alternative Dispute Resolution in the EU and Beyond', *European Law Review* 38 (2013), pp.187-208.

4. Details of the impact (indicative maximum 750 words)

There are two key areas of impact: (1) providing specialist expertise to policy makers and legislators in the UK, Europe, China and the United Nations to help them inform their thinking and decisions; and (2) influencing the actual wording of ODR legislation at EU and UK level.

In 2011, Prof Hörnle provided advice, based on her extensive research, to the European Commission, in conjunction with Pablo Cortes from the University of Leicester. This enabled the Commission to develop common criteria for ODR. Prof Hörnle was subsequently involved in drafting the relevant proposals for EU legislation (the Directive and Regulation), at the stage of the European Commission Proposals in 2011. The Proposals have now been passed as the Directive 2013/11/EU on ADR for Consumer Disputes and Regulation EU/524/2013 on Consumer ODR. Prof Hörnle's research has had a significant impact on this legislation in several specific areas. For example, Hörnle's idea, articulated in her 2013 research, that the ODR platform is not just an information tool, but should include various functions enabled by IT (such as the facility to transfer a dispute directly from the consumer to the ADR provider in another member state) is reflected in Article 5 of the Regulation. Hörnle also suggested to the Commission, based on findings in her research, that a way of imposing pressure on traders to use ODR is to ensure that they have to inform consumers at the outset of the transaction, before a dispute arises, whether or not they engage with ODR; this is reflected in Article 14 of the Regulation and Article 13 of the Directive. Prof Hörnle also had substantive input in the Commission's deliberation on the scope of the ADR Directive. As a result, ideas from her research can be seen in Article 2 of the Directive.

Articles 7 of the Directive (relating to transparency) and Article 9 (fairness) also show the significant influence from Hörnle's 2009 research, in particular the ways which due process and fairness can be implemented in a wide-range of cross-border disputes. Article 17 of the Directive reflects Hörnle's thinking of the need for co-operation between law enforcement and ADR, as many consumer disputes related to fraud and scammers.

The Draft Proposals were originally issued by the European Commission in November 2011 and have been adopted by the EU in May 2013. They are expected to be implemented into UK law thereafter under the lead of the Department of Business, Innovation and Skills. Prof Hörnle has been invited to the stakeholder meetings at the Department of Business Innovation and Skills for the implementation of the Directive in September 2013 and a roundtable with the Minister for Consumer Affairs, Jo Swinson in October 2013.

Work carried out by the UK Government's Department of Business, Innovation and Skills also shows the impact of Prof Hörnle's research. In January 2008, she advised the then Consumer Affairs Minister Gareth Thomas MP on consumer protection and e-commerce policy, dispute resolution for consumers and ODR. In 2009, she provided advice to several of the Department's Expert Group Meetings on e-commerce and consumer protection, including a meeting with the then European Commissioner for Consumer Protection, Meglena Kuneva. This work stream led to the preparation for establishing a Consumer Advocate by the Labour Government in 2009/2010

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(see reference in Section 5 below).

In 2010, she was commissioned by the Department for Business, Innovation and Skills to carry out an international and comparative study on the Enforcement of Consumer Protection Law on the Internet and produced a Research Report which contained many ideas and concepts articulated in her previous research on ODR. The Research Report created an understanding of the different approaches to enforcing consumer protection law in cross-border internet cases by showcasing models for ODR in other countries (Australia, Austria, Canada, France, Denmark, Netherlands and US) and extrapolating the lessons learned for the UK and including recommendations for ODR in the UK.

In 2011, she provided consultancy for the BIS's stakeholder advisory meetings on Online Dispute Resolution with the purpose of implementing an ODR system for e-commerce in the UK, in view of the impending European legislation (the ADR Directive and ODR Regulation on which she was advising the EU Commission at that time).

Between November 2011 and March 2012, she provided advice and consultancy to BIS, based on her previous research on ADR and ODR, which was used by BIS to inform their work in relation to the Call for Evidence on the EU Proposals on Alternative Dispute Resolution. The consultancy involved two workshops at BIS and an unpublished research report. This work informed BIS work on implementing the EU legislation on ODR and ADR and many of her ideas and advice are reflected in BIS work, including the Call for Evidence on ADR and the Government's Response. This work is ongoing and BIS will issue a Consultation in January 2014.

Prof Hörnle's research has also helped formulate the Chinese government's approach to ODR. She acted as a Senior Expert to the Chinese government on ODR as part of the EU-China Information Society Project from 2007-2009. She consulted on four different projects in different regions of China (with the Beijing, Guangzhou, Xian and Shanghai Arbitration Commissions).

Finally, Prof Hörnle's was a panel member for the United Nations Commission on International Trade Law (UNCITRAL)'s Working Group on Online Dispute Resolution, attending meetings in Geneva (2001-2005) and Vienna (2010), with her ideas helping to shape the discussion and build knowledge of this new discipline. As part of this international workstream she has also been advising the US State Department on ODR in connection with the ODR initiative of the Organisation of American States (OAS).

5. Sources to corroborate the impact (indicative maximum of 10 references)

European Commission common and criteria: Contract Attached CONFIDENTIAL
European Commission Draft proposals.

- Directive on ADR:
http://ec.europa.eu/consumers/reProfess_cons/docs/directive_ADR_en.pdf
- Regulation on ODR:
http://ec.europa.eu/consumers/reProfess_cons/docs/ODR_regulation_en.pdf

UK Department of Business, Innovation and Skills:

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The Consultancy involved 2 two-hour workshops with Prof Heidi Munn and her team plus an unpublished research report of 85 pages which was used to brief the relevant BIS officials

- Call for evidence:
www.gov.uk/government/uploads/system/uploads/attachment_data/file/31842/11-1372-call-for-evidence-eu-proposals-dispute-resolution.pdf
- Government's Response to the Call for Evidence (May 2012):
www.gov.uk/government/publications/eu-proposals-on-alternative-dispute-resolution-government-response-to-call-for-evidence and

Impact case study (REF3b)

www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86-xxxv/8603.htm

- Consumer Advocate by the Labour Government in 2009/2010:
www.bis.gov.uk/files/file52072.pdf and
<http://webarchive.nationalarchives.gov.uk/http://www.dti.gov.uk/Consultations/role-powers-consumer-advocate?cat=closedawaitingresponse>

China:

- Final report of the EU-China Information Society Project: <http://egov.iist.unu.edu/download/EU-China-Information-Society-Final-Report.pdf>

UNCITRAL: See Inaugural Proposal and exchange of emails with the US State Department in 2010 (available on request)