

CHEN XI*

Asynchronous Online Courts: The Future of Courts?

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ABSTRACT

Asynchronous online courts combine the features of the current online court and online dispute resolution (ODR), allowing the public to communicate online asynchronously. Canada, the United Kingdom (U.K.), Singapore, and China have established various asynchronous online courts, and the new courts are highly likely to become the next generation of online courts. However, there are challenges against asynchronous online courts, as the new courts might violate the principle of direct and verbal trial, lead to paper hearings rather than oral trials, exclude those who cannot access the Internet, provide less transparency, impair court majesty, and create a mass of frivolous cases. Should asynchronous online courts be established and popularized? This Article first gives an overview of online courts, ODR, and asynchronous online courts. It then introduces the practice of asynchronous online courts in Canada, the U.K., Singapore, and China. Next, the Article responds to the challenges above. It argues that, compared to traditional and current online courts, asynchronous online courts can provide a higher quality of communication among the parties and judges, grant more access to justice and transparency, rebuild court majesty, and prevent frivolous cases by introducing new mechanisms. This Article further provides legislative suggestions for the establishment of asynchronous online courts. It concludes by restating that asynchronous online courts will grow into the next generation of online courts.

INTRODUCTION

The twenty-first century is an “Internet century.” As of 2022, there are 4.9 billion active Internet users globally, accounting for 62.5% of the total population.¹ Emerging Internet-based technologies are developed and popularized worldwide. We download music from websites, take online classes on mobile phones, and ask for doctors’ remote diagnoses using computers. The Internet is changing our lives.

This Internet change is also true for courts, especially under the influence of the pandemic. Before the COVID-19 global pandemic, some courts attempted to introduce Internet-based technologies into the court system, such as videoconferences, emails, and e-filing. For example, Singapore courts required all paper documents for civil cases to be submitted electronically in 2000.² Shanghai courts rolled out an online case-registration system in 2008, allowing people to initiate a lawsuit without stepping into physical courts.³ However, the changes were national and had limited influence. Globally, most dispute-resolution work is still conducted face-to-face,⁴ and participants in court proceedings still need to visit physical courts to resolve disputes.

Unexpectedly, COVID-19 challenged the in-person method by forcing courts to shut down.⁵ To reopen, courts worldwide embraced

¹ *How Many People Use the Internet in 2022?*, OBERLO, <https://www.oberlo.com/statistics/how-many-people-use-internet> [<https://perma.cc/EN9V-PFQ5>].

² RICHARD SUSSKIND, *ONLINE COURTS AND THE FUTURE OF JUSTICE* 172 (Oxford University Press, 2019).

³ See Jiefang Ribao (解放日报), *Shanghai Fayuan 12 Yue 1 Ri Qi Shixing Wangshang Li'an Shencha* (上海法院 12 月 1 日起试行网上立案审查) [*Shanghai Courts Will Allow Case-Registration Online from December 1*], ZHONGHUA RENMIN GONGHEGUO ZHONGYANG RENMIN ZHENGFU (中华人民共和国中央人民政府) [CENT. PEOPLE’S GOV. P.R.C.] (Dec. 2, 2008), http://www.gov.cn/govweb/fwxx/sh/2008-12/02/content_1165695.htm [<https://perma.cc/L59D-HBBR>].

⁴ Jean R. Sternlight & Jennifer K. Robbennolt, *In-Person or Via Technology?: Drawing on Psychology to Choose and Design Dispute Resolution Processes*, 71 *DEPAUL L. REV.* 537, 537 (2022) (“Many people still conducted dispute resolution largely in person.”).

⁵ For example, the U.S. Supreme Court closed the building “for the health and safety of the public and Supreme Court employees.” See Ariel Shapiro, *Supreme Court Suspends Hearings for the First Time in a Century Due to Coronavirus*, *FORBES* (Mar. 16, 2020, 11:48 AM), <https://www.forbes.com/sites/arielshapiro/2020/03/16/supreme-court-suspends-hearings-for-first-time-in-a-century-due-to-coronavirus/?sh=2f68ffe92fbb> [<https://perma.cc/P764-U6JB>]. A number of courts in China closed in February 2020 due to the pandemic. See Qiqihaershi Zhongji Renmin Fayuan (齐齐哈尔市中级人民法院), *Yiqing Fangkong Qijian Zanshi Guanbi Susong Fuwu He Shensu Xinfang Jiedai Changsuo* (疫情防控期间暂时关闭诉讼服务和申诉信访接待场所) [*Litigation Services and Petition Reception Sites Will Be Temporarily Closed During the Pandemic*], QIQIHAERSHI ZHONGJI RENMIN FAYUAN (齐齐哈尔市中级人民法院) [QIQIHAER INTERMEDIATE PEOPLE’S CT.], Feb. 1, 2020, <http://qqherzy.hljcourt.gov.cn/public/detail.php?id=10203>; Xinmi Fayuan (新密法院),

new technologies and moved online rapidly, replacing in-person meetings with remote communications via videoconference, e-filing, and other technologies.⁶ Sending notice, submitting documents and evidence, holding trials, and receiving judgments could all be conducted online. Online courts walked into our daily life and developed into a new normal.

While most online courts require mediations and trials to be held synchronously, some jurisdictions go further by creating an asynchronous way of dispute resolution. For instance, British Columbia of Canada has developed the Civil Resolution Tribunal (CRT), which allows asynchronous online dispute resolution. In addition, China is establishing asynchronous courts nationwide, enabling all citizens to mediate and participate in court trials online asynchronously. Nevertheless, there are challenges with asynchronous online courts, and increasing objections will emerge if asynchronous online courts become more popular than traditional courts.

This Article argues that asynchronous online courts will provide improved services to the public compared to traditional courts and the current online courts in many ways and, thus, will grow into the next generation of online courts.

Part I of this Article gives an overview of asynchronous online courts. It describes the functions and features of online courts and compares online courts with online dispute resolution (ODR). While both online courts and ODR require online work, ODR widely uses artificial intelligence (AI) and algorithms that replace human mediators. ODR also aims to prevent future disputes by analyzing data generated during dispute resolution to improve daily operations. By contrast, online courts are not constructed to prevent future disputes and are governed by human judges. The Article then defines asynchronous online courts as an updated version of the online court that incorporates ODR technologies, which enables all court

Xinmishi Renmin Fayuan Guanyu Zai Yiqing Fangkong Qijian Zanshi Guanbi Susong Fuwu He Xinfang Jiedai Changsuo de Tongzhi (新密市人民法院关于在疫情防控期间暂时关闭诉讼服务和信访接待场所的通知) [*Notice of Xinmishi People's Court on Temporarily Closing Litigation Services and Petition Reception Sites During the Pandemic*], HENANSHENG XINMISHI RENMIN FAYUAN (河南省新密市人民法院) [HENAN XINMI PEOPLE'S CT.] (Feb. 2, 2020), <http://xmsfy.hncourt.gov.cn/public/detail.php?id=2733> [<https://perma.cc/E9E5-4MT9>].

⁶ See Sternlight & Robbenolt, *supra* note 4, at 1. Even the traditional Supreme Court of the United States adopted telephone conference calls for hearings. SUP. CT. OF THE U.S., *Press Release Regarding Postponement of March Oral Arguments*, (Mar. 16, 2020), https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_03-16-20 [<https://perma.cc/L3JY-HZ6Y>].

proceedings, including court trials, to be completed online and asynchronously.

Part II explores the current practice of asynchronous online courts worldwide. It includes the CRT in Canada, which is the most frequently cited asynchronous practice; the Money Claim Online (MCOL) and the Online Solutions Court in the U.K., where the latter largely incorporates algorithms; the Asynchronous Court Dispute Resolution Hearing by Email (aCDR) in Singapore, which is usually ignored; and the Hangzhou Internet Court and the wide application of asynchronous online courts in the rest of China, which have not received enough attention.

While some scholars challenge the legitimacy of asynchronous online courts, Part III of this Article argues that the new courts have the necessary rationality and justification, and they work better than traditional physical courts and the current online courts in several respects. In providing procedural justice, asynchronous online courts follow the principle of direct trial, allowing judges to examine evidence and communicate directly with the parties and witnesses. People worry that the courts violate the principle of verbal trial by conducting paper hearings; however, they also hide the personal traits of the parties and witnesses during a trial and, therefore, reduce potential discrimination that might have occurred in face-to-face courts. Besides, modern courts tend to reduce oral sessions and increase paper sessions in adversarial and inquisitorial systems, and asynchronous online courts follow the trend.

As for providing access to justice, this Article points out that the litigation costs under the current court system are unduly high in terms of both money and time, and the disproportionate costs impede the public from accessing justice. By contrast, asynchronous online courts provide more efficient and affordable services to the public. An ideal asynchronous online court requires no traveling, accommodation, or loss of salary for taking a trial. The concerns over digital exclusion will be eventually overcome by the popularization of the Internet and the IT assistance granted by courts and volunteers.

Under open justice, asynchronous online courts could also permit public hearings by publishing the links for entering virtual courtrooms in advance. As courts electronically store proceedings, all the data related to an asynchronous case are traceable, and greater transparency could be achieved by disclosing those data. Although some people worry that asynchronous online courts break court rituals designed to deter the parties, the importance of court rituals are declining. Court

majesty should be based on finding the facts and applying the law correctly rather than frightening the parties. In addition, some people are concerned that asynchronous online courts would bring a flood of lawsuits. However, a sound court system should provide enough access to court resources; impeding cases from entering courtrooms based on the fear of caseload is questionable.

Part IV provides legislative suggestions for the establishment of asynchronous online courts. The new court will apply to small claims, procedural claims, and some foreign-related alien-related cases. Finally, this Article concludes that asynchronous online courts will become the next generation of online courts, broadly considering Canada and China's experiences.

I

AN OVERVIEW OF ASYNCHRONOUS ONLINE COURTS

This Part argues that asynchronous online courts are updated online courts that incorporate ODR technologies, which allow full-process asynchronous litigation. Thus, it is essential to first comprehend the meaning of ODR and online courts.

A. ODR

In the beginning, ODR was created as an "online version" for alternative dispute resolution (ADR).⁷ ADR provides mediation, arbitration, and other third-party interventions to solve disputes less formally and more efficiently with or without court assistance.⁸ There is always a neutral third party in ADR, often a mediator or arbitrator.⁹ Over time, ODR has developed its approach to resolving conflicts as merely being an alternative to ADR, but it could hardly meet the huge demands of dispute resolution in the digital era.¹⁰ The growing ODR

⁷ See Orna Rabinovich-Einy & Ethan Katsh, *Digital Justice: Reshaping Boundaries in an Online Dispute Resolution Environment*, 1 INT'L. J. ONLINE DISP. RESOL. 5, 6 (2014) ("ODR began its existence as 'Online ADR'").

⁸ See Thomas J. Stipanowich & Ryan Lamare, *Living with ADR: Evolving Perceptions and Use of Mediation, Arbitration and Conflict Management in Fortune 1,000 Corporations*, 19 HARV. NEGOT. L. REV. 1, 2 (2014); Orna Rabinovich-Einy & Ethan Katsh, *The New New Courts*, 67 AM. U. L. REV. 165, 170 (2017).

⁹ U.S. DEP'T OF LAB., *Alternative Dispute Resolution*, <https://www.dol.gov/general/topic/labor-relations/adr> [<https://perma.cc/TQ85-QQJV>].

¹⁰ See ETHAN KATSH & ORNA RABINOVICH-EINY, *DIGITAL JUSTICE: TECHNOLOGY AND THE INTERNET OF DISPUTES 33* (Oxford Univ. Press 2017). But some scholars argue that ODR is only the online version of ADR. See Julio César Betancourt & Elina Zlatanska,

method primarily resolves disputes “involv[ing] small dollar amounts” by using electronic communications and software.¹¹ Transnational giants, such as eBay and Alibaba, design exclusive ODR systems to handle conflicts.¹²

B. Online Courts

As online courts remain a new creature to most jurisdictions, scholars have not yet come up with a unified definition for the courts.¹³ Some Chinese scholars enumerate the functions of online courts to include case filings, case registrations, the exchange and challenge of evidence, court trials, services, and judgments.¹⁴ The New South Wales government defines online courts as a forum that “enables judicial officers and legal representatives . . . to exchange written” information online.¹⁵

Professor Susskind, the leader in promoting online courts, also defines online courts based on their functions, which include *online judging* and *extended courts*.¹⁶ Online judging authorizes all court proceedings to be conducted by live streaming “audio, video, and real-time chat,” and all hearings, document submissions, and decisions can be completed online.¹⁷ Meanwhile, online courts have extended functions that employ tools to help courts “take advantage of technology . . . and extend its reach beyond the traditional remit of

Online Dispute Resolution (ODR): What Is It, and Is It the Way Forward?, 79 INTL. J. ARB., MEDIATION & DISP. MGMT. 256, 256 (2013).

¹¹ Brian A. Pappas, *Online Courts: Online Dispute Resolution and the Future of Small Claims*, 12 UCLA J.L. & TECH. 1 (2008).

¹² Platforms formulate user agreements with clauses that mandate arbitration if a dispute occurs. See KATSH & RABINOVICH-EINY, *supra* note 10, at 45.

¹³ Lord Justice Briggs, CIVIL COURTS STRUCTURE REVIEW: FINAL REPORT 36 (2016), <https://www.judiciary.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf> [<https://perma.cc/5HXS-RP2X>] (“The concept (still unhappily) named the Online Court . . .”). See also SUSSKIND, *supra* note 2, at 5 (“[C]ommentators and developers are still squabbling over this.”).

¹⁴ See Wang Fuhua (王福华), *Dianzi Fayuan: You Neibu Dao Waibu de Goujian* (电子法院：由内部到外部的构建) [*Electronic Courts: From Inside Construction to Outside Construction*], 30 DANGDAI FAXUE (当代法学) [CONTEMP. L. REV.] 23 (2016); Liu Min (刘敏), *Dianzi Shidai Zhongguo Minshi Susongfa de Biange* (电子时代中国民事诉讼法的变革) [*The Reform of Chinese Civil Litigation in the Electronic Era*], 5 RENMIN SIFA (人民司法) [PEOPLE’S JUDICATURE] 70 (2011).

¹⁵ *Online Court*, NSW GOVT., <https://courts.nsw.gov.au/courts-and-tribunals/online-services/online-court.html> [<https://perma.cc/AVM8-ZUHS>].

¹⁶ See SUSSKIND, *supra* note 2, at 6–7.

¹⁷ *Id.* at 6.

traditional courts.”¹⁸ For example, online courts should embrace everyday technologies to assist self-represented litigants in understanding the law and communicating with courts.¹⁹

This Article does not intend to give a fair definition of online courts, as the field is at an early stage. Nevertheless, this Article agrees with Professor Susskind’s definition. *Online judging* is the core of online courts as it determines how to try a case. *Extended courts* support online courts to be more intelligent and accessible.

Therefore, online courts are courts that allow all proceedings to be conducted online, resolving cases without anyone presenting in physical courts, and developing extended functions to improve access to justice. Such courts provide the same public legal services as traditional courts.²⁰ Human judges remain the listener and deciders of cases, even though they hear arguments, examine the evidence, and deliver opinions in virtual courtrooms.²¹ Physical courtrooms are entirely moved online with the support of Zoom, Citrix, Tencent, and other software. Compared to traditional courts, online courts merely change the form of courtrooms (from physical to virtual) and how documents are submitted (from hard copy to electronic copy), and both courts function similarly in practice.

The virtual feature attaches additional advantages to online courts. Online legal services are more accessible. China has reported that the time it takes an online court to conclude a case is half that of a traditional court, and the average number of trial days has been shortened by nearly three-fifths.²² Online courts are also more affordable because the parties need only an electronic device and the Internet to attend court

¹⁸ *Id.*

¹⁹ *Id.* at 6–7 (“These *extended courts* provide tools . . . that help them to formulate their arguments and assemble their evidence. They can also offer various forms of non-judicial settlement such as negotiation and early neutral evaluation.”). (“[E]veryday techniques and technologies . . . can help non-lawyers interact much more easily with the courts . . . [and] users can themselves file documents, track cases, engage with court officials and judges, and progress their disputes by using intuitive, jargon-free systems.”).

²⁰ *Id.* at 63 (“[O]nline courts are a public service.”).

²¹ *Id.* at 143–44.

²² SUPREME PEOPLE’S COURT OF THE PEOPLE’S REPUBLIC OF CHINA, CHINESE COURTS AND INTERNET JUDICIARY (2019), at 64 (“As of October 31, 2019, Hangzhou Internet Court, Beijing Internet Court, and Guangzhou Internet Court had accepted 118,764 Internet-related cases and concluded 88,401 Compared with the case handling before, on average, it took 45 minutes in an online hearing and 38 days to conclude a case, which respectively saved time by about 3/5 and 1/2.”).

trials without the bother of traveling.²³ There are other advantages, such as appropriateness, speediness, and flexibility.²⁴

Before the breakout of COVID-19, many jurisdictions had already started to explore establishing online courts. In 2001, Michigan passed legislation expected to establish the first public and virtual court that would permit all parties, witnesses, and judges to participate in all court proceedings remotely, though the ambition was never accomplished due to lack of funding.²⁵ In 2016, the CRT started to operate in British Columbia, Canada, enabling the public to resolve certain cases online.²⁶ In 2017, China built the world's first Internet Court in Hangzhou.²⁷ However, those practices were national and had only a limited impact.

Due to the coronavirus, courts worldwide had no choice but to move online. To keep running while protecting the safety of court staff and the public,²⁸ technologies such as e-filing and e-evidence are developing quickly.²⁹ Now, most European countries have fully adopted remote hearings,³⁰ and a great number of judges work from home in some jurisdictions.³¹ An increasing number of judges, lawyers, and laypeople recognize the advantages of online courts.³²

²³ See *Online Dispute Resolution for Low Value Civil Claim*, CIV. JUST. COUNCIL 8 (2015), <https://www.judiciary.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf> [<https://perma.cc/L446-J8QZ>] (“[A]ffordable—for all citizens, regardless of their means.”).

²⁴ *Id.*

²⁵ Lucille M. Ponte, *Michigan Cyber Court: A Bold Experiment in the Development of the First Public Virtual Courthouse*, 4 N.C. J.L. & TECH. 51, 55–56 (2002); Neal Feigenson & Christina Spiesel, *The Juror and Courtroom of the Future*, in *THE FUTURE OF EVIDENCE: HOW SCIENCE AND TECHNOLOGY WILL CHANGE THE PRACTICE OF LAW* 127–28 (Carol Henderson & Jules Epstein eds., 2012).

²⁶ Rabinovich-Einy & Katsh, *supra* note 7, at 190.

²⁷ See Zheng Xujiang (郑旭江), *Hulianwang Fayuan Jianshe Dui Minshi Susong Zhidu de Tiaozhan Ji Yingdui* (互联网法院建设对民事诉讼制度的挑战及应对) [*The Challenge of the Construction of the Internet Court to the Civil Procedure System and Its Countermeasures*], 396 FALÜ SHIYONG (法律适用) [J.L. APPL.] 10 (2018).

²⁸ See Michael Legg & Anthony Song, *The Courts, the Remote Hearing and the Pandemic: From Action to Reflection*, 44 U.N.S.W. L.J. 126, 126–27 (2021); U.S. CTS., *Federal Judiciary Confronts Coronavirus Spread: Judicial Conference Acts on Court Administration Matters* (Mar. 17, 2020), <https://www.uscourts.gov/news/2020/03/17/federal-judiciary-confronts-coronavirus-spread-judicial-conference-acts-court> [<https://perma.cc/CX6A-E4ES>].

²⁹ See Anne Sanders, *Video-Hearings in Europe Before, During and After the COVID-19 Pandemic*, 12 INT’L J. CT. ADMIN. art. 3, 1 (2021).

³⁰ *Id.*

³¹ Such as Australia where “over half the judges have been reported as ‘working from home’” in the Federal Court of Australia. Legg & Song, *supra* note 28, at 155.

³² A survey shows that more than 73.33% of judges and lawyers in Shuangliu Primary People’s Court in China accept online courts. See Zuo Weimin (左卫民), *Zhongguo Zaixian*

People frequently use the terms “online courts” and “ODR” interchangeably and regard them as synonyms.³³ Both ODR and online courts work online and lack in-person communications. This feature empowers the parties to communicate by email and videoconferences online, reducing litigation costs substantially. The general use of emails and chat applications further make it possible for both online courts and ODR to resolve disputes synchronously or asynchronously, which promotes the settlement of disputes.³⁴

Even though sharing some similarities, online courts and ODR are different in general. Adopting software and algorithms aimed at preventing future disputes distinguishes online courts from ODR.

Dissimilar to online courts, ODR largely replaces human mediators, arbitrators, and judges with software and algorithms.³⁵ Some believe that while human capacity can deal with only a limited number of conflicts, algorithms will never meet labor shortages because algorithms were born to process massive amounts of data.³⁶

An example of ODR is eBay. Each year, the online auction platform handles more than 60 million disputes independently through its ODR system,³⁷ a number that is higher than that of the cases handled by the U.K. civil courts.³⁸ eBay’s automated system provides a two-stage dispute resolution process.³⁹ In the first stage, all eBay buyers and sellers are encouraged to reach an agreement with the assistance of the

Susong: Shizheng Yanjiu Yu Fazhan Zhanwang (中国在线诉讼：实证研究与发展展望) [*Online Litigation in China: Empirical Research and Development Prospect*], 170 BIIAOFAYANJIU (比较法研究) [J. COMP. L.] 161, 165 (2020). See also Baker McKenzie, *The Future of Disputes: Are Virtual Hearings Here to Stay?*, KPMG 5 (2021), https://www.bakermckenzie.com/-/media/files/insight/publications/2021/02/are-virtual-hearings-here-to-stay--baker-mckenzie-and-kpmg-report_010221.pdf [<https://perma.cc/V2ZU-HD4F>] (66% of the respondents had positive experiences with virtual hearings).

³³ See Lord Justice Briggs, *supra* note 13, at 37 (“The essence of the criticism under this heading appears to be that since the Online Court is a form of ODR (online dispute resolution) in which hearings are to be discouraged and human contact with litigants made by unqualified Case Officers rather than judges.”).

³⁴ See SUSSKIND, *supra* note 2, at 62 (“ODR - online and asynchronous”); KATSH & RABINOVICH-EINY, *supra* note 10, at 34 (“[ODR] also conveys advantages for those who employ asynchronous communication.”).

³⁵ See KATSH & RABINOVICH-EINY, *supra* note 10, at 34–35; Noam Ebner & Elayne E. Greenberg, *Strengthening Online Dispute Resolution Justice*, 63 WASH. U. J.L. & POL’Y 65 (2020).

³⁶ See KATSH & RABINOVICH-EINY, *supra* note 10, at 35, 46–47.

³⁷ *Id.* at 35.

³⁸ Lord Justice Briggs, *supra* note 13, at 44.

³⁹ Ethan Katsh, *Bringing Online Dispute Resolution to Virtual Worlds: Creating Processes Through Code*, 49 N.Y.L. SCH. L. REV. 271, 278 (2004).

system and can communicate asynchronously: they present claims and demands in the system, then the system identifies the specific type of disputes, breaks down issues, draws agreements, proposes solutions, and fulfills other tasks human mediators would do.⁴⁰ If the parties cannot reach a consensus, a human mediator will intervene in the second stage.⁴¹

Another example is Alibaba, which dealt with 2.16 million disputes in 2010.⁴² Alibaba's ODR system also has two phases. Phase one encourages the parties to use the automated negotiation system to handle a dispute: the parties first submit their claims, arguments, and evidence electronically, then the system "talk[s] and negotiate[s]" with both parties.⁴³ The parties need not respond instantly; instead, they can reply asynchronously within a given time, and if a party misses the designated deadline, that party loses the case.⁴⁴ Human mediators or public juries get involved in phase two if the parties fail to achieve a consensus.⁴⁵ Surprisingly, more than 99% of the disputes are settled in phase one, entirely relying on the system.⁴⁶

The wide use of software and algorithms enables companies like eBay and Alibaba to solve numerous conflicts with few human interventions, which distinguishes ODR from online courts, as most court proceedings still require judges to perform extensive human intervention.⁴⁷

Tremendous data is generated and collected during the process of ODR, and the master of an ODR system may analyze the data to

⁴⁰ See EBAY, *Dispute Resolution Overview*, <https://pages.ebay.com/services/buyandsell/disputeres.html> [<https://perma.cc/JSW6-EMQF>]; KATSH & RABINOVICH-EINY, *supra* note 10, at 34.

⁴¹ *Id.*

⁴² Long Fei (龙飞), *Zhongguo Zaixian Jiufen Jiejue Jizhi de Fazhan Xianzhuang Ji Weilai Qianjing* (中国在线纠纷解决机制的发展现状及未来前景) [*The Development Status Quo and the Future of China's Online Dispute Resolution Mechanism*], 367 FALÜ SHIYONG (法律适用) [J.L. APPL.] 2, 5 (2016).

⁴³ See Liu Pengfei (刘鹏飞), *Dianzi Susong Tingshen Zhongxin Zhuyi de Chengxu Shixian – Yi Jiejian He Fansi Taobao ODR Jingyan Wei Shijiao* (电子诉讼庭审中心主义的程序实现——以借鉴和反思淘宝 ODR 经验为视角) [*The Realization of the Centralism of Electronic Litigation Court Proceedings – from the Perspective of Taobao's ODR Experience*], 5 SHEHUI KEXUE (社会科学) [J. SOC. SCI.] 94, 95–96 (2021).

⁴⁴ *Id.*

⁴⁵ The public jury are Alibaba users who are not involved in the dispute and volunteer to decide the dispute. *See id.*

⁴⁶ KATSH & RABINOVICH-EINY, *supra* note 10, at 34, 65–66.

⁴⁷ See Lord Justice Briggs, *supra* note 13, at 38 (“[T]he main form of conciliation at stage 2 [of the Online Solutions Court] is to be by human intervention, while all decisions about substantive rights are to be made by a judge.”).

prevent future disputes.⁴⁸ For instance, dispute data generated in Alibaba's ODR system is analyzed to gain a deeper understanding of its customers. The operation department uses the analysis to improve operation design to decrease future disputes.⁴⁹

While ODR systems take advantage of users' personal information exclusively,⁵⁰ participants in court proceedings expect privacy protection.⁵¹ Although court judgments are accessible online, personal information unrelated to public scrutiny is kept confidential.⁵² Many cases are undisclosed to the public because of privacy protection and national security. Moreover, online courts maintain the primary function of traditional courts, which is to resolve disputes rather than to prevent conflicts. As online courts permit increasing access to courts, more cases will flow into courts, and it seems unlikely for online courts to invent a system that helps prevent future disputes.

C. Asynchronous Online Courts

This Article proposes that asynchronous online courts are updated online courts that incorporate certain ODR technologies. Similar to online courts, asynchronous online courts allow all court proceedings to be conducted online, and cases can be fully resolved without any participants presenting in physical courts. Asynchronous online courts further incorporate ODR technologies and permit all participants in judicial proceedings to communicate asynchronously via emails, chat applications, and other specially designed applications.⁵³ The new courts allow full-process asynchronous litigation, and even court trials

⁴⁸ See KATSH & RABINOVICH-EINY, *supra* note 10, at 46–47, 51–52.

⁴⁹ See *id.* at 66, 72 (“[The system may] detect bad actors by monitoring activity on the site, authenticating identity . . . and mentoring parties on appropriate behavior and on how to deal with problems once they arise – all activities directed at prevention . . . to maximize the number of *successful transactions*.”).

⁵⁰ See Ayelet Sela, *Streamlining Justice: How Online Courts Can Resolve the Challenges of Pro Se Litigation*, 26 CORNELL J.L. & PUB. POL'Y 331, 345 (2016). (“The claimed efficiencies of ODR come at the expense of procedural quality, primarily due to the limitations the online environment imposes on human communication, privacy, confidentiality and neutrality.”).

⁵¹ See Peter A. Winn, *Online Court Records: Balancing Judicial Accountability and Privacy in an Age of Electronic Information*, 79 WASH. L. REV. 307, 308–09 (2004).

⁵² *Id.* at 311.

⁵³ See Ebner & Greenberg, *supra* note 35, at 83–84 (“[O]ur legal system will evolve into ODR-infused justice systems.”); Orna Rabinovich-Einy & Ethan Katsh, *Access to Digital Justice: Fair and Efficient Processes for the Modern Age*, 18 CARDOZO J. CONFLICT RESOL. 637, 651 (2017) (“Courts and other public entities will inevitably adopt more ODR.”).

can be completed online asynchronously, which is distinctive from the current online courts that still mandate synchronous trials.

The experience of eBay and Alibaba shows that the asynchronous dispute resolution approach is plausible. Both eBay and Alibaba enable users to present claims and negotiate asynchronously via automated systems. It not only saves time for the users, as they can respond whenever and wherever they want within the specified period, but also facilitates dispute settlement since billions of disputes have been solved.⁵⁴ Thus, it is feasible for online courts to incorporate an asynchronous method of dispute resolution.

Some states have adopted the idea of asynchronous online courts, and their experiences should be introduced so that an increasing number of countries can embrace the new courts.

II

CURRENT PRACTICES OF ASYNCHRONOUS ONLINE COURTS

This Part introduces the latest practices of asynchronous online courts and practices that contain elements of asynchronous online courts in Canada, the U.K., Singapore, and China. While most articles compliment the U.K. and Canada, this Article considers China the leading country in the area, though not much attention has been paid to China.

A. Canada

British Columbia started to operate an online public dispute resolution system, the Civil Resolution Tribunal (CRT), in 2016.⁵⁵ CRT is Canada's first online tribunal that provides twenty-four seven services.⁵⁶ The CRT solves four types of cases: small claims up to CAD\$5,000, vehicle accident disputes, strata property disputes, and societies and cooperative associations disputes.⁵⁷ Even though the CRT is an administrative tribunal rather than a formal court, it has actual

⁵⁴ See KATSH & RABINOVICH-EINY, *supra* note 10, at 65–66, 79.

⁵⁵ 2018: *Online Tribunal Decision Plan*, CIV. RESOL. TRIBUNAL (Nov. 8, 2018), <https://civilresolutionbc.ca/blog/online-tribunal-decision-plan/> [<https://perma.cc/H54M-TWD5>].

⁵⁶ See Shannon Salter & Darin Thompson, *Public-Centred Civil Justice Redesign: A Case Study of the British Columbia Civil Resolution Tribunal*, 3 MCGILL J. DISP. RESOL. 113, 114 (2017).

⁵⁷ *Small Claims Under \$5,000 Coming to the CRT on June 1, 2017*, CIV. RESOL. TRIBUNAL (Apr. 18, 2017), <https://civilresolutionbc.ca/blog/small-claims-5000-coming-crt-june-1-2017/> [<https://perma.cc/WK84-WVXG>].

civil jurisdiction over issues that a formal court would generally handle.⁵⁸

The CRT operates in a four-stage process. The process is designed to be friendly to self-represented litigants, and legal representatives are generally excluded from the tribunal.⁵⁹ It first provides a self-help “Solution Explorer,” which supports the users in understanding the nature of their legal issues and possible remedies by asking simple questions and giving free legal information based on the answers.⁶⁰ If the parties pursue the issue, they may move to stage two of “negotiation.” This process is similar to eBay’s and Alibaba’s ODR systems because it also provides an automated platform where the parties can negotiate.⁶¹ If the parties fail to reach an agreement, a case manager will intervene in stage three of “Facilitation” to assist them in negotiating.⁶² If a consensus cannot be concluded, the case will flow to the “Decision” stage and be decided by an independent CRT member.⁶³ The decision is binding as a court order.⁶⁴ The parties may complete all four steps remotely and asynchronously.⁶⁵ Even in the fourth stage, most judgments are concluded based on written materials.⁶⁶

⁵⁸ See CIV. RESOL. TRIBUNAL, 2020/2021 ANNUAL REPORT (2021), <https://civilresolutionbc.ca/wp-content/uploads/CRT-Annual-Report-2020-2021.pdf> [<https://perma.cc/P23E-6V5L>] (“The Civil Resolution Tribunal (CRT) is an independent, quasi-judicial tribunal . . .”).

⁵⁹ See Civil Resolution Tribunal Rules § 1.16(1) (Can.) (“Unless these rules state a party does not need the tribunal’s permission to be represented, a party must receive the tribunal’s permission to have a representative.”).

⁶⁰ See *Solution Explorer*, CIV. RESOL. TRIBUNAL, <https://civilresolutionbc.ca/solution-explorer/> [<https://perma.cc/HK5B-TBGN>].

⁶¹ See *What Is Negotiation?*, CIV. RESOL. TRIBUNAL, <https://civilresolutionbc.ca/help/what-is-negotiation/> [<https://perma.cc/DCP4-FFAG>].

⁶² A case manager is not an official judge. Agreements reached in stage three can be turned into “an official consent resolution order for court enforcement.” See *What Is Facilitation?*, CIV. RESOL. TRIBUNAL, <https://civilresolutionbc.ca/help/what-is-facilitation/> [<https://perma.cc/Q277-NU2Z>].

⁶³ See *id.*

⁶⁴ *Id.*

⁶⁵ See Suzanne E. Chiodo, *Ontario Civil Justice Reform in the Wake of COVID-19: Inspired or Institutionalized?*, 57 OSGOODE HALL L.J. 801, 828 (2021). The author also confirmed this with the CRT directly. See e-mail from Jon A. to author (Dec. 31, 2021, 03:00 BJT) (on file with author) (“[P]arties in the Negotiation stage of a dispute may communicate synchronously or asynchronously. There is a Messaging portal accessible via a participant’s CRT account that functions much like a private chat room for negotiations, which would make for synchronous communication. However, parties can carry out negotiations in other mediums of their choosing, including email, which would be asynchronous. During the Decision Stage, parties submit arguments and evidence independently of each other, and this process is asynchronous.”).

⁶⁶ See Salter & Thompson, *supra* note 56, at 134.

The CRT is popular in British Columbia. The Solution Explorer was used 46,510 times, and 5,227 disputes were closed in one year.⁶⁷ The simplified process is friendly to laypeople because the users are guided step-by-step, and lawyers are unnecessary. The CRT is also affordable. The information granted by the Solution Explorer is free, the parties need not travel or get accommodation, and there are generous discounts for those who move to chargeable stages.⁶⁸ Compared to traditional courts, the CRT brings more efficiency as well. The CRT resolves cases in an average time of 85.8 days,⁶⁹ while the traditional Ontario Small Claims Court would take four times as long to settle similar cases.⁷⁰

However, the CRT has limitations. The CRT is employed only by the province of British Columbia, and other provinces in Canada have not adopted similar tribunals. The number of cases the CRT resolved in a year (5,227 cases) is still limited compared to the cases closed by the traditional courts.⁷¹ Many lawyers oppose the CRT as it almost excludes the hiring of lawyers.⁷² Moreover, the CRT is not a formal court but an administrative tribunal, though it is deemed a court in its jurisdiction.

B. The United Kingdom

1. Money Court Online (MCOL)

The United Kingdom is another pioneer in the field of asynchronous online courts. England and Wales launched an online court system called the MCOL to enable self-represented litigants to handle online money claims for up to £100,000 in 2002.⁷³ Although the MCOL is not designed as an asynchronous online court, some procedures can be completed asynchronously.

⁶⁷ From April 1, 2020, to March 31, 2021. CIV. RESOL. TRIBUNAL, *supra* note 58, at 1, 16.

⁶⁸ The CRT provides a fee waiver for low-income people; if the parties reached an agreement during the negotiation, the fees would be returned. For applications and responses submitted online, the CRT gives a CAD\$25 discount equivalent to the fees submitted. *Id.*

⁶⁹ From April 1, 2020, to March 31, 2021. *Id.* at 28.

⁷⁰ See Chiodo, *supra* note 65, at 829.

⁷¹ There were 341,056 general civil cases initiated in Canada in 2019–2020 (excluding family cases). *Table 35-10-0112-01 Civil Court Cases, by Level of Court and Type of Case, Canada and Selected Provinces and Territories*, STAT. CAN. (Mar. 10, 2022), <https://doi.org/10.25318/3510011201-eng> [<https://perma.cc/7WJ7-RBWU>].

⁷² See Salter & Thompson, *supra* note 56, at 119 (“In Canada, lawyers enjoy a wide monopoly over the resolution of problems . . .”).

⁷³ See *Money Claim Online (MCOL) User Guide*, HM CTS. & TRIBUNALS SERV. (Nov. 9, 2021), <https://www.gov.uk/government/publications/money-claim-online-user-guide/money-claim-online-mcol-user-guide> [<https://perma.cc/D27W-CGKN>]; SUSSKIND, *supra* note 2, at 109.

Before initiating a claim in the MCOL, the parties must conduct certain preliminary actions online to resolve a conflict without court involvement.⁷⁴ If the parties insist on bringing a court claim, they may pay court fees and move forward with their claim.⁷⁵ The system first asks the plaintiff to present claims, then the defendant must respond within a given period.⁷⁶ Both processes can be completed asynchronously, and it takes only about thirty minutes to file or defend a claim.⁷⁷ The MCOL regulates eight ways how a defendant should respond.⁷⁸ Each path leads to a different procedure; most require physical court hearings.⁷⁹ Nevertheless, there are two situations in which a plaintiff may resolve their case asynchronously without any physical hearings: those where the defendant fully admits to owing the money and those where the defendant fails to respond within the allotted time frame.⁸⁰

In 2018, the MCOL rolled out a new service called Online Civil Money Claims (OCMC) to deal with money claims under £10,000 more efficiently.⁸¹ It encourages the parties to resolve a dispute without the involvement of third parties and provides free mediation service without holding court hearings, if necessary.⁸² Many procedures are simplified so that the service is easier to understand, which attracts laypeople.⁸³

⁷⁴ See HM CTS. & TRIBUNALS SERV., *supra* note 73 (The claimant and defendant shall try “to settle the issue without going to court (for example, [the claimant] will usually need to send the defendant a letter before making the claim, providing sufficient information about the matter to allow them to understand [the claimant’s] position, and allow them a chance to respond).”).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *See id.*

⁷⁸ Including acknowledgement of service, states paid defense, full defense, counterclaim, part admission, full admission, no response, and payment. *See id.* at 15.

⁷⁹ *Id.*

⁸⁰ *Id.* at 16, 18 (“If the defendant admits the entire claim and [the claimant] wish[es] to accept this response and make an order for repayment, [the claimant can] continue to request judgment online.”) (“If the defendant has not responded to [the claimant’s] claim within the allowed time, . . . [the claimant] can request judgment with MCOL.”).

⁸¹ HM CTS. & TRIBUNALS SERV., *HMCTS Services: Online Civil Money Claims* (Feb. 14, 2021), <https://www.gov.uk/government/publications/hmcts-reform-civil-fact-sheets/fact-sheet-online-civil-money-claims> [<https://perma.cc/2MS2-8UF2>].

⁸² *Id.*

⁸³ For example, the type of a defendant’s responses changes from eight types to six types, and three types of responses could be submitted online electronically and asynchronously. *See* Practice Direction 51R – Online Civil Money Claims Pilot, § 5, tbl.A, <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/practice-direction-51r-online-court-pilot#6>

Even though the MCOL permits partial procedures to be conducted asynchronously, it excludes the use in instances such as WhatsApp,⁸⁴ and many cases mandate the parties to appear in physical courtrooms, especially for traditional MCOL procedures.⁸⁵ The complicated classification of a defendant's responses may further discourage self-represented litigants from participating in the online court.

2. *Online Solutions Court*

The £1 billion court reform program in England and Wales is deemed the most significant of its kind in the world, covering over fifty projects in all legal departments.⁸⁶ One of the projects is remarkable—creating an online civil court that resolves all civil claims under £25,000 in England and Wales, the Online Solutions Court.⁸⁷ The Online Solutions Court is designed to employ a three-stage procedure,⁸⁸ and many proceedings can be conducted asynchronously.

Stage one is essential because it enables users to resolve disputes early with affordable services.⁸⁹ During stage one, an interactive, automated system that extensively uses algorithms supports a user to see whether a valid legal claim exists. If a valid legal claim exists, the system categorizes the user's complaint, delivers customized advice based on the user's descriptions, and recommends non-court dispute resolution methods.⁹⁰ Self-represented litigants can file claims and submit evidence under the system's guidance without lawyers, and they may communicate asynchronously during the whole stage.⁹¹ The wide application of algorithms makes stage one similar to ODR, though there is no machine mediator or judge.

If a dispute fails to be resolved in stage one, it moves to stage two, where human Case Officers (facilitators rather than judges) intervene.⁹² They review the statements and evidence and assist the parties

[<https://perma.cc/SDW6-Q4YC>]. The new service achieved “a 95% user satisfaction rating” in 2021. HM CTS. & TRIBUNALS SERV., *supra* note 81.

⁸⁴ *Money Claim Online (MCOL) User Guide*, *supra* note 73, at 5 (“[Y]ou may be contacted via email and asked to download forms rather than being posted information in some instances.”).

⁸⁵ Under the eight types of responses, six require a physical presence in court. *Id.*

⁸⁶ See SUSSKIND, *supra* note 2, at 166.

⁸⁷ Ebner & Greenberg, *supra* note 35, at 77.

⁸⁸ See Lord Justice Briggs, *supra* note 13, at 36.

⁸⁹ *Id.* at 50, 58–59.

⁹⁰ *Id.*

⁹¹ *Id.* at 36.

⁹² *Id.* at 59.

in negotiation and mediation.⁹³ Stage two can be completed through email, telephone contact, and private mediation.⁹⁴ If the dispute remains unresolved, human judges get involved in stage three. Judges may collect evidence from both parties electronically and determine cases by videoconferences, telephone conferences, paper documents, and physical hearings.⁹⁵ Some, but not all, procedures of stages two and three may be conducted asynchronously.

The Online Solutions Court is an extension of the MCOL: from purely money claims to almost all civil claims.⁹⁶ Asynchronous elements can be easily found in the design. However, there are concerns. The new court should have been established by 2022, but it was delayed until 2023,⁹⁷ and it is uncertain if the court will be built up in time. Even if the court were established successfully by 2023, it is unclear if it would run smoothly because the new court largely relies on the first stage, which requires high-quality algorithms and IT supports.⁹⁸ In brief, England and Wales should build the new court first.

C. Singapore

As early as 2000, Singapore mandated that all traditional legal documents in civil disputes be submitted electronically through the Electronic Filing System.⁹⁹ In 2013, an updated system called eLitigation (Integrated Electronic Litigation System) was launched.¹⁰⁰ Law firms and court users may file cases, submit and read e-documents,

⁹³ SUSSKIND, *supra* note 2, at 100.

⁹⁴ See Lord Justice Briggs, *supra* note 13, at 59.

⁹⁵ *Id.* at 45, 63.

⁹⁶ See Sir Terence Etherton, M.R., *The Civil Court of the Future*, THE LORD SLYNN MEM'L LECTURE 8 (June 14, 2017), <https://www.judiciary.uk/wp-content/uploads/2017/06/slynn-lecture-mr-civil-court-of-the-future-20170615.pdf> [<https://perma.cc/7NG2-JBCT>] (“The introduction of the Online Solutions Court . . . expands the court’s purpose. At the present time, it only does so in terms of its presently intended jurisdiction: claims up to a value of £10,000 in specified areas of civil work.”); Lord Justice Briggs, *supra* note 13, at 25 (“A new online rules committee will cover Civil, Family and Tribunals . . .”).

⁹⁷ *Additional Year to Deliver Ambitious Court Reforms*, GOV.UK (Mar. 5, 2019), <https://www.gov.uk/government/news/additional-year-to-deliver-ambitious-court-reforms> [<https://perma.cc/GDU4-R8Q9>].

⁹⁸ Though Lord Briggs proposes that the existence of similar systems “does not suggest that there are any inherently insuperable IT technical challenges.” Lord Justice Briggs, *supra* note 13, at 50.

⁹⁹ See *About eLitigation*, ELITIGATION, https://www.elitigation.sg/_layouts/IELS/HomePage/Pages/AboutElit.aspx [<https://perma.cc/QS9U-VDDJ>].

¹⁰⁰ *Id.*

get served, and manage cases on the eLitigation asynchronously.¹⁰¹ However, the service may be subscribed to only specified government entities and law firms that have been granted a license by the Legal Services Regulatory Authority,¹⁰² which indicates that self-represented litigants may not enjoy the convenience provided by the eLitigation.

The State Courts Center for Dispute Resolution employed the Asynchronous Court Dispute Resolution Hearing by Email (aCDR) pilot during the pandemic.¹⁰³ The aCDR is applied in the following categories of cases, and all hearings are conducted asynchronously: non-injury motor accident claims, personal injury claims, medical negligence claims, and claims in negligence.¹⁰⁴ The scope of the aCDR further extends to processes and hearings of *ex parte* summonses, summonses for directions,¹⁰⁵ and all pre-assessment of damages ADR conferences.¹⁰⁶

For a case applicable to the aCDR, the parties apply and update case progress to the court via email within a given period, and the court gives directions via email.¹⁰⁷ The judge holds “paper hearings” to review submitted documents.¹⁰⁸ Further “paper hearings” might be employed

¹⁰¹ See *eLitigation Practice Reference Guide for Supreme Court*, ELITIGATION, <https://forms.elitigation.sg/Documents/eLitigationPracticeReferenceGuide2013-09-25.pdf> [<https://perma.cc/MQ6T-XF5A>]; *Summary of Rules of Court*, in *Reference Centre*, ELITIGATION, https://www.elitigation.sg/_layouts/IELS/HomePage/Pages/ReferenceCentre.aspx#href-ref-centre-content [<https://perma.cc/K3A5-PM6K>].

¹⁰² See *Frequently Asked Questions*, ELITIGATION, https://www.elitigation.sg/_layouts/IELS/HomePage/Pages/PortalFaq.aspx#href-faq-contentTag [<https://perma.cc/UM4X-Q4RX>].

¹⁰³ See REGISTRAR’S CIRCULAR NO.2 OF 2020, ASYNCHRONOUS COURT DISPUTE RESOLUTION HEARINGS BY EMAIL (ACDR) FOR CASE MANAGEMENT LISTS AT THE STATE COURTS CENTER FOR DISPUTE RESOLUTION (SSCDR) (2020) (Sing.) [hereinafter REGISTRAR’S CIRCULAR NO.2 OF 2020].

¹⁰⁴ *Id.* ¶ 4.

¹⁰⁵ REGISTRAR’S CIRCULAR NO.11 OF 2020, DISPENSATION OF ATTENDANCE AND ASYNCHRONOUS HEARING OF SPECIFIED CATEGORIES OF CIVIL HEARINGS, ¶ 2 (2020) (Sing.) [hereinafter REGISTRAR’S CIRCULAR NO.11 OF 2020]; REGISTRAR’S CIRCULAR NO.12 OF 2020, DISPENSATION OF ATTENDANCE AT SPECIFIED HEARING AND ASYNCHRONOUS HEARING OF SPECIFIED CATEGORIES FOR APPLICATIONS FILED UNDER THE PROTECTION FROM HARASSMENT ACT (CAP 256A), ¶ 2 (2020) (Sing.) [hereinafter REGISTRAR’S CIRCULAR NO.12 OF 2020]. See Rules of Court 2021, O.1, r.3 (2021) (Sing.) (*ex parte* summons is also named as summons without notice, and it means “an application to Court in an action or appeal which does not need to be served on anyone”).

¹⁰⁶ REGISTRAR’S CIRCULAR NO.13 OF 2020, ASYNCHRONOUS HEARING AND PROCESSING OF PRE-ASSESSMENT OF DAMAGES ALTERNATIVE DISPUTE RESOLUTION CONFERENCES (2020) (Sing.) [hereinafter REGISTRAR’S CIRCULAR NO.13 OF 2020].

¹⁰⁷ See REGISTRAR’S CIRCULAR NO.2 OF 2020, *supra* note 103, ¶ 2.

¹⁰⁸ See REGISTRAR’S CIRCULAR NO.11 OF 2020, *supra* note 105, ¶ 12(2) (“The Court will proceed on the hearing date to consider all documents filed by the applicant by

if needed.¹⁰⁹ A case can be resolved fully electronically and asynchronously without the physical attendance of the parties.

Unlike the CRT, which is merely a tribunal, the aCDR applies to formal courts. The pilot proves that asynchronous online courts are plausible; however, they have deficiencies. For example, lawyers are indispensable in the aCDR system, which is highly unfriendly to self-represented litigants.¹¹⁰ Furthermore, the scope of the aCDR process is also narrow since it applies only to personal injury cases, procedure cases, and partial processes of ADR, excluding even small claims.

D. China

Although not much attention has been paid to China, it is the first state to apply asynchronous online courts nationwide.

1. Hangzhou Internet Court

The Hangzhou Internet Court, established in August 2017, was the first internet court in the world.¹¹¹ Back then, China already had the largest e-commerce market globally, with annual sales of \$1.149 trillion.¹¹² Many e-commerce enterprises were incorporated in Hangzhou, including Alibaba.¹¹³ The considerable amount of e-

the specified deadline without the attendance of the applicant or his solicitor (hereafter referred to as a ‘paper’ hearing). The Court will then proceed either to issue orders . . . or to issue further directions and fix the application for a further ‘paper’ hearing.”) *See also* REGISTRAR’S CIRCULAR NO.12 OF 2020, *supra* note 105, ¶¶ 12–13; REGISTRAR’S CIRCULAR NO.13 OF 2020, *supra* note 106, ¶ 4(2).

¹⁰⁹ *Id.*

¹¹⁰ *See Frequently Asked Questions - Subscribe to eLitigation - Setting Up of Accounts*, ELITIGATION, https://www.elitigation.sg/_layouts/IELS/HomePage/Pages/PortalFaq.aspx#href-faq-contentTag [<https://perma.cc/4FHR-3JK4>]. (“Only law firms that have a license from the Legal Services Regulatory Authority (‘LSRA’) and selected government agencies in Singapore may subscribe to eLitigation.”)

¹¹¹ Yu Jianhua (余建华), *Yong Hulanwang Fangshi Shenli Hulanwang Anjian, Quanju Shoujia Hulanwang Fayuan Luohu Hangzhou* (用互联网方式审理互联网案件全球首家互联网法院落户杭州) [*Apply the Internet to Decide Internet Cases, The World’s First Internet Court Settled in Hangzhou*], ZUIGAO RENMIN FAYUAN (最高人民法院) [SUP. PEOPLE’S CT.], (Aug. 18, 2017, 3:05 PM), <https://www.chinacourt.org/article/detail/2017/08/id/2969278.shtml> [<https://perma.cc/F4AK-N7JL>].

¹¹² Frank Tong, *Online Retail Sales in China Soar Past \$1 Trillion in 2017*, DIGIT. COM. 360 (Feb. 8, 2018), <https://www.digitalcommerce360.com/2018/02/08/online-retail-sales-china-soar-past-1-trillion-2017/> [<https://perma.cc/A56F-G3NV>].

¹¹³ *See* Yang Xiuqing (杨秀清), *Hulanwan Fayuan Dingwei Zhi Huigui* (互联网法院定位之回归) [*Return to the Orientation of the Internet Court*], 5 ZHENGFA LUNCONG 30 (政法论丛) [J. POL. SCI. & L.] 31 (2019); Yu, *supra* note 111.

economy led to numerous internet disputes, which steered the establishment of the Hangzhou Internet Court.¹¹⁴

The first generation of the Hangzhou Internet Court can be regarded as a model of modern online courts. It provides an online platform where participants in judicial proceedings may file cases, submit documents, exchange evidence, mediate, partake in trials, and deliver and receive judgment online.¹¹⁵ Unlike the CRT or the MCOL, which primarily deal with small claims, the Hangzhou Internet Court has jurisdiction over nine types of cases, and all are closely related to the Internet.¹¹⁶ It has actual jurisdiction over both civil and administrative cases, and the value restriction of a dispute is the same as other primary courts in China.¹¹⁷ The extended jurisdiction allows the new court to handle a much wider range of cases.

Nevertheless, the first generation of the Hangzhou Internet Court requires the parties and judges to stay online synchronously during mediations and court trials.¹¹⁸ The Hangzhou Internet Court launched

¹¹⁴ *Id.*

¹¹⁵ See HANGZHOU INTERNET CT., *Hangzhou Hulianwang Fayuan Gaikuang* (杭州互联网法院概况) [Introduction of the Hangzhou Internet Court], <https://www.netcourt.gov.cn/?lang=En#lassen/courtIntroduce/jurisdiction> [<https://perma.cc/V2AB-KKKW>].

¹¹⁶ See HANGZHOU INTERNET CT., *Home Page*, <https://www.netcourt.gov.cn/?lang=En> [<https://perma.cc/M9GR-75Q4>] (“1. Wangluo gouwu hetong jiu fen yu wangluo fuwu hetong jiu fen; 2. Wangluo zhuzuoquan, linjiequan qinquan jiu fen yu wangluo zhuzuoquan, linjiequan quanshu jiu fen; 3. Wangluo qinhai taren renshenquan, caichanquan deng minshi quanyi jiu fen; 4. Wangluo chanpin zeren jiu fen; 5. Wangluo jinrong jiekuan hetong jiu fen, xiao'e jiekuan hetong jiu fen; 6. Wangluo yuming quanshu, qinquan ji hetong jiu fen; 7. Wangluo gongyi susong; 8. Wangluo xingzhengguanli yinfa de xingzheng jiu fen; 9. Zhiding guanxia.”) (1. 网络购物合同纠纷与网络服务合同纠纷; 2. 网络著作权、邻接权侵权纠纷与网络著作权、邻接权权属纠纷; 3. 网络侵害他人人身权、财产权等民事权益纠纷; 4. 网络产品责任纠纷; 5. 网络金融借款合同纠纷、小额借款合同纠纷; 6. 网络域名权属、侵权及合同纠纷; 7. 网络公益诉讼; 8. 网络行政管理引发的行政纠纷; 9. 指定管辖。) [“1. Contract disputes arising from online shopping and online services; 2. Disputes of ownership of online copyright and neighboring right and disputes of infringement of copyright and neighboring right; 3. Disputes arising from infringement of other’s personality rights, property rights and other civil rights online; 4. Product liability disputes generated from online shopping; 5. Contract disputes arising from online loans; 6. Disputes of Internet domain names; 7. Public interest litigation related to the Internet; 8. Administrative disputes arising from the administration of the Internet; and 9. Designated jurisdiction.”].

¹¹⁷ See HANGZHOU INTERNET CT., *supra* note 115. The Hangzhou Internet Court is regarded as a primary people’s court rather than an intermediate people’s court in China. Besides, there is no special court for small claims in China.

¹¹⁸ See Wu Yong (吴勇), *Quanqiu Shouge! Hangzhou Hulianwang Fayuan “Yibu Shenli Moshi” Shangxian, Dianfu Chuantong* (全球首个! 杭州互联网法院“异步审理模式”上线, 颠覆传统) [*The First in the World! The Hangzhou Internet Court’s “Asynchronous Trial Mode” Is Launched and Reverses the Tradition*], Hangzhou Zaixian (杭州在线)

the “asynchronous court trial” on April 2, 2018, which allows all court proceedings, including mediations and trials, to be conducted asynchronously to provide more convenient services.¹¹⁹ The second generation of online courts, asynchronous online courts, was created in China. Now, both asynchronous and synchronous procedures are applicable in the Hangzhou Internet Court.¹²⁰

To start a claim in the asynchronous court, the plaintiff should select the type of dispute on the court’s platform to file the case online and submit all documents electronically.¹²¹ Next, a mediator will intervene to help the parties take an online pre-litigation mediation.¹²² If the

[HANGZHOU ONLINE] (Apr. 2, 2018), <https://baijiahao.baidu.com/s?id=1596630089160469812&wfr=spider&for=pc> [<https://perma.cc/Y7KQ-L4XU>].

¹¹⁹ *Id.*

¹²⁰ The parties can choose whether to apply asynchronous or synchronous procedures. See Hangzhou Hulanwang Fayuan Shewang Anjian Yibu Shenli Guicheng (Shixing) (杭州互联网法院涉网案件异步审理规程（试行）) [Rules on Procedures of Asynchronous Litigation of Internet-Related Cases (Trial)] (promulgated by the Hangzhou Internet Ct., Apr. 2, 2018), <https://www.netcourt.gov.cn/portal/indexRpc/viewProcedure.json?fileIdStr=n7abwKJW-ECgB7f7bv-6ew> [<https://perma.cc/25K6-M872>], art. 3 (China) (“Gefang dangshiren ziyuan shenqing yibu shenli de, shifou qidong you faguan jue ding. Faguan keyi genju anqing, jishutiaojian xiang dangshiren tuisong yibu shenli, gefang dangshiren tongyi huo yifang tongyi, lingyifang weizai guidingshijian nei fabiao yijian de, keyi shiyong gai shenli fangshi. Gefang dangshiren jun weixuanze de, buneng qidong yibu shenli.”) (各方当事人自愿申请异步审理的，是否启动由法官决定。法官可以根据案情、技术条件向当事人推送异步审理，各方当事人同意或一方同意、另一方未在规定时间内发表意见的，可以适用该审理方式。各方当事人均未选择的，不能启动异步审理。)) [“If all parties voluntarily apply for an asynchronous trial, it is up to the judge to decide whether to apply an asynchronous trial. The judge may apply an asynchronous trial based on the facts of the case and technical conditions. If all parties agree, or one party agrees while the other party fails to express an opinion within the specified time, an asynchronous trial may be applied. If none of the parties have chosen an asynchronous trial, then it cannot be applied.”].

¹²¹ See Hangzhou Hulanwang Fayuan Susongpingtai Shenli Guicheng (杭州互联网法院诉讼平台审理规程) [Rules on Procedures of Asynchronous Litigation of Internet-Related Cases (Trial)], *supra* note 120, art. 3.

¹²² See *id.* art. 7(1) (“Wangshang suqian tiaojie. Susongpingtai shezhi tiaojie qianzhi chengxu, jinru suqiantiaojie de anjian, you tiaojieguanliyuan fenpei yiming tiaojieyuan, shuangfang dangshiren junke zai susongpingtai ‘zaixian tiaojie’ zhong shuru zijide tiaojie yixiang, bingyou tiaojieyuan juzhong tiaojie . . . Ruo zai tiaojie qixiannei shuangfang buneng dacheng hejie yixiang, ze anjian jinru li’an shenhe zhuangtai, zhuanjiao li’an faguan jinxing shenhe.”) (网上诉前调解。诉讼平台设置调解前置程序，进入诉前调解的案件，由调解管理员分配一名调解员，双方当事人均可在诉讼平台“在线调解”中输入自己的调解意向，并由调解员居中调解……若在调解期限内双方不能达成和解意向，则案件进入立案审核状态，转交立案法官进行审核。)) [“Parties must try online mediation before a dispute moves to the judge. The litigation platform sets up pre-mediation procedures. For cases entering the pre-mediation, the mediation administrator will assign a mediator. Both parties can enter their mediation proposals in the ‘online mediation’ module of the litigation platform, and the mediator will mediate in a neutral position . . . If the parties cannot reach a settlement within the mediation period, the case will move to reviewing filing stage and be transferred to a filing judge for review.”].

mediation fails, the case moves to a judge.¹²³ To protect the autonomy of the parties, asynchronous procedures are not mandated.¹²⁴ Only after acquiring the consent of all parties and the approval of judges are such proceedings initiated.¹²⁵ Otherwise, synchronous procedures would be applied.

Specifically, the Hangzhou Internet Court divides an asynchronous online trial into four sessions: questioning, debating, closing statements, and delivering judgment.¹²⁶ In the process of questioning, one party provides questions to the adversarial party within twenty-four hours after the judge mandates, and both parties may answer any questions if they want; after the twenty-four hours, the parties cannot question anymore, only the judge may question.¹²⁷ Then it moves to the debate session, during which the parties may debate and present statements supporting their claims within forty-eight hours.¹²⁸ In the twenty-four hours following the debate session, both parties direct closing statements.¹²⁹ If the judge considers it necessary, she may cancel the questioning session or combine the questioning and debating

¹²³ *Id.*

¹²⁴ *See id.*, art. 3.

¹²⁵ *See id.*

¹²⁶ *Id.* art. 6–8.

¹²⁷ *See id.* art. 6 (“Jing faguan xuke, anjian jinru fawen huanjie. Fawen yi jiaohushi fawenkuang de fangshi jinxing. Gefang dangshiren xianghu fawen ying yu 24 xiaoshi zhinei wanbi, fawen bufen xianhou, tiwen yu huida ke tongshi jinxing. Fawen jieshuhou de 24 xiaoshi, dangshiren buneng wen zhineng da. Faguan fawen bushou shijian xianzhi. Faguan renwei wuxu fawen de, keyi zhijie jinxu bianlun huanjie.”) (经法官许可，案件进入发问环节。发问以交互式发问框的方式进行。各方当事人相互发问应于 24 小时之内完毕，发问不分先后，提问与回答可同时进行。发问结束后的 24 小时，当事人不能问只能答。法官发问不受时间限制。法官认为无需发问的，可以直接进入辩论环节。) [“With the judge’s permission, the case moves to the question-and-answer session, which shall be conducted via the interactive question box. All parties should question each other within twenty-four hours. The questioning session has no described order, and the questioning and answering can be carried out simultaneously. After the twenty-four hours, the parties cannot ask questions and can only answer in the next twenty-four hours. There is no time limit for the judge to ask questions. If the judge considers there is no need to ask questions, he/she can order to move to the debate session directly.”].

¹²⁸ *See id.* art. 7 (“Gefang dangshiren zai shangshu diaocha jieshuhou 48 xiaoshi zhinei bufen xianhou fabiao bianlun yijian.”) (各方当事人在上述调查结束后 48 小时之内不分先后发表辩论意见。) [“The parties shall present their arguments in no described order within forty-eight hours after the conclusion of the previous session.”].

¹²⁹ *See id.* art. 8 (“Gefang dangshiren zai bianlun jieshuhou 24 xiaoshi zhinei bufen xianhou chenshu zuihou yijian.”) (各方当事人在辩论结束后 24 小时之内不分先后陈述最后意见。) [“The parties shall state their final opinions in no particular order within twenty-four hours after the debating session.”].

sessions.¹³⁰ Finally, the judge delivers a judgment. The average court time for an online trial is twenty-eight minutes and for closing a case is forty-one days.¹³¹

The asynchronous online court created by the Hangzhou Internet Court has many advantages. The first is to support convenient communications. During the process, the parties and judges may contact each other on the platform by sending texts, voice messages, pictures, documents, and videos asynchronously.¹³² The interactions among the parties and judges are similar to daily communications conducted on WeChat, and it is not necessary to send emails or hold videoconferences. It also lowers litigation costs by enabling the parties to finish a lawsuit on their smartphones and computers whenever and wherever they can respond within the prescribed period.¹³³ As Chinese access to the internet increases, asynchronous online courts will allow more laypeople to access court resources. Additionally, the asynchronous process is so friendly to self-represented litigators that lawyers are optional.

The asynchronous online option provided by the Hangzhou Internet Court breaks time and space constraints and empowers the parties to use their spare time to complete a lawsuit online.

¹³⁰ See *id.* art. 6, 9 (“Fawen yu bianlun you faguan jue ding keyi hebing jinxing. Beigao wei jinxing dabian ji juzheng de, yiban hebing jinxing. Yuanbeigao ke zai fawen kaishi de 24 xiaoshi zhinei zhijie fabiao quanbu bianlun yijian.”) (发问与辩论由法官决定可以合并进行。被告未进行答辩及举证的，一般合并进行。原、被告可在发问开始的 24 小时之内直接发表全部辩论意见。) [“Sessions of questioning and debating may be combined at the discretion of the judge. If the defendant fails to make a defense and present evidence, the two sessions are generally combined. The plaintiff and the defendant can directly express all statements within twenty-four hours from the beginning of the questioning session.”].

¹³¹ The Paper (澎湃新闻), *Hangzhou Hulanwang Fayuan Zaixian Tingshen Pingjun Yongshi 28 Fenzhong, Xianshang Jieanlü Chao Bacheng* (杭州互联网法院在线庭审平均用时 28 分钟，线上结案率超八成) [*The Average Online Trial Time of Hangzhou Internet Court Is 28 Minutes, and the Online Case Closing Rate Exceeds 80%*], Baidu (Feb. 27, 2019) (“Zaixian tingshen pingjun yongshi 28 fenzhong, pingjun shenli qixian 41 tian.”) (在线庭审平均用时 28 分钟、平均审理期限 41 天。) [“The average online trial time is twenty-eight minutes and the average trial duration is forty-one days.”], <https://baijiahao.baidu.com/s?id=1626604120414486571&wfr=spider&for=pc> [https://perma.cc/65LC-GLEF].

¹³² See Wu, *supra* note 118.

¹³³ See SUPREME PEOPLE’S COURT OF THE PEOPLE’S REPUBLIC OF CHINA, *supra* note 22, at 74 (“A total of 2,495 cases were successfully concluded through [the asynchronous procedures in the Hangzhou Internet Court], saving 6 hours in traveling for litigants each case on average.”).

In September 2018, China established the Beijing Internet Court and the Guangzhou Internet Court,¹³⁴ allowing full-process asynchronous online litigations.¹³⁵ However, asynchronous online courts remained an exception in China. Before August 2021, only the three internet courts had asynchronous online trials.

2. *New Rules in China*

China employed asynchronous online courts across the country in August 2021, making it the first country to adopt asynchronous online courts nationwide. The Online Litigation Rules for the People's Courts (OLR), enacted by the Supreme People's Court of the Republic of China, became effective on August 1, 2021.¹³⁶ With the consent of all

¹³⁴ *China Establishes Two New Internet Courts in Beijing and Guangzhou*, CMS LAW-NOW (Sept. 13, 2018), https://www.cms-lawnow.com/ealerts/2018/09/china-establishes-two-new-internet-courts-in-beijing-and-guangzhou?cc_lang=en [<https://perma.cc/NQG6-3SCV>].

¹³⁵ See Beijing Hulianwang Fayuan Diani Susong Tingshen Guifan (Shixing) (北京互联网法院电子诉讼庭审规范(试行)) [Rules of Online Litigation Trials of Beijing Internet Court (Trial)] (promulgated by the Beijing Internet Ct., Feb. 21, 2020), <https://www.bjinternetcourt.gov.cn/cac/zw/1582274924940.html> [<https://perma.cc/7MRZ-JBW9>], art. 20(2) (China) [hereinafter Rules of Online Litigation Trials of Beijing Internet Court (Trial)] (“Ruguo shixian tongshi tingshen queyou kunnan, jing dangshiren shumian shenqing qie qita gefang dangshiren shumian tongyi, jing fayuan shenhehou, keyi caiyong dangshiren, qita susongcanyuren zai butong shijian canjia tingshen de feitongshi tingshen fangshi, bing zai helishijiannei wancheng tingshen.”) (如果实现同时庭审确有困难, 经当事人书面申请且其他各方当事人书面同意, 法院审核后, 可以采用当事人、其他诉讼参与人在不同时间参加庭审的非同时庭审方式, 并在合理时间内完成庭审。) [“If it is indeed difficult to hold synchronous court trials, upon the written application of the parties and the written consent of the other litigation participants, the court may adopt an asynchronous court trial in which the parties and other litigation participants may take the court trials at different times within a reasonable time.”]. See also Guangzhou Hulianwang Fayuan Zaixian Shenli Guicheng (Shixing) (广州互联网法院在线审理规程(试行)) [Rules of Guangzhou Internet Court on Issues Concerning Online Court Trials (Trial)] (promulgated by the Guangzhou Internet Ct., Jan. 10, 2019), <https://www.gzinternetcourt.gov.cn/#/article/Detail?id=edcd95673c3a4163854bfa1f1efd84ab&titleType=normativeDocuments&type=NormativeDocuments&apiType=routine> [<https://perma.cc/JE8N-RQ9Y>], art. 82 (China) (“Zaixian jiaohu shenli shizhi dangshiren ji qita susongcanyuren zai benyuan guiding de qixiannei, zizhu xuanze shijian denglu susongpingtai, wancheng chenshu, dabian, juzheng, zhizheng, jieshou xunwen bing chongfen fabiao yijian hou, benyuan buzai kaiting shenli, jingxing caipan de shenli fangshi.”) (在线交互式审理是指当事人及其他诉讼参与人在本院规定的期限内, 自主选择时间登录诉讼平台, 完成陈述、答辩、举证、质证、接受询问并充分发表意见后, 本院不再开庭审理, 迳行裁判的审理方式。) [“Online interactive trial means that the parties and other litigation participants log into the litigation platform within the time limit specified by the court, and they present statements, defend, present and challenge evidence, make inquiries, and fully express their opinions. The court will no longer hold other court trials and will deliver a judgment directly.”].

¹³⁶ See ONLINE LITIGATION RULES OF THE PEOPLE'S COURTS, *Judicial Interpretation No. 12* [2021] (promulgated by the Judicial Comm. Sup. People's Ct., May 18, 2021, effective Aug. 1, 2021), (China) [hereinafter ONLINE LITIGATION RULES FOR THE PEOPLE'S

parties in a dispute, the parties may mediate, exchange and challenge evidence, investigate and inquire, participate in court trials, get served, and receive judgments online asynchronously.¹³⁷ The OLR recognizes the legitimacy of asynchronous online courts, and every Chinese court is authorized to provide fully asynchronous service—not just the three internet courts.

However, the asynchronous online courts in China have deficiencies. The jurisdiction of the new courts is limited. Currently, only three kinds of cases are within the jurisdiction of asynchronous online courts: small claims and civil and administrative cases that apply summary procedures.¹³⁸ Applying asynchronous online proceedings is also subject to strict restrictions as the OLR mandates three preconditions: all parties consent to apply asynchronous proceedings, have genuine difficulty participating in a synchronous online trial, and have no disputes over the main facts and evidence of the case.¹³⁹ Further, the OLR frequently uses the word “may,”¹⁴⁰ which indicates that each court has discretion in deciding how its asynchronous court will run. In other words, different courts may apply different asynchronous proceedings, and the nonuniform proceedings may bother the public.

III

LEGITIMACY OF ASYNCHRONOUS ONLINE COURTS

Incorporating asynchronous online courts into the modern court system is necessary as they allow participants in judicial proceedings to resolve disputes more efficiently and less expensively. However, even in China, where asynchronous online courts are legalized

COURTS], <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fenglish.court.gov.cn%2Fpdf%2FOnlineLitigationRulesofthePeople%27sCourts.docx&wdOrigin=BROWSELINK> [<https://perma.cc/5SMA-8S2F>].

¹³⁷ *See id.* art. 20(1) (“With the consent of all parties, the People’s Courts may require the parties to log into the litigation platform separately within a certain period of time to participate in mediation, exchange of evidence, investigation and inquiry, and court trial asynchronously.”).

¹³⁸ *See id.* art. 20(2) (“For small claims or summary civil and administrative cases, the People’s Courts and the parties may record the trial and upload the video to the litigation platform within the designated period of time, thus complete the trial asynchronously, if these cases meet the following conditions: (1) all parties indeed have difficulty participating in online trial simultaneously; (2) one party submits a written application and all parties agree; and (3) upon exchange of evidence or investigation and inquiry online, all parties have no disputes over the main facts and evidence of the case.”).

¹³⁹ *Id.*

¹⁴⁰ *See id.*

nationwide, many scholars are suspicious of the legitimacy and rationality of asynchronous online courts, especially asynchronous court trials.

This Part argues that asynchronous online courts work better than traditional physical courts and even the current online courts in several aspects.

A. Procedural Justice

Procedural justice is an essential principle in civil procedure law.¹⁴¹ All systems seek a just procedure as it helps reach a correct judgment in a particular case at a reasonable cost.¹⁴² Even if the substantive decision of a specific case were wrong, the procedures applied should still be just.¹⁴³ The adjudication procedures that apply to a specific case, employing face-to-face or screen-to-screen communications, are closely connected to procedural justice.¹⁴⁴

This Section discusses procedural justice from three aspects: the principle of direct trial, the principle of verbal trial, and the worries with paper hearings in both the adversarial and inquisitorial systems.

1. Principle of Direct Trial

The principle of direct trial is one of the basic principles when trying a case under the civil law system,¹⁴⁵ and it can also be found in the common law system.¹⁴⁶ Under this principle, all parties, witnesses, and legal representatives present in front of a judge.¹⁴⁷ Only the judge who

¹⁴¹ See Adrian A.S. Zuckerman, *Justice in Crisis: Comparative Dimension of Civil Procedure*, in CIVIL JUSTICE IN CRISIS: COMPARATIVE DIMENSIONS OF CIVIL PROCEDURE 2, 3 (1999) (“All systems of procedure seek to do justice.”).

¹⁴² See Lawrence B. Solum, *Procedural Justice*, 78 S. CAL. L. REV. 181, 237, 239, 241 (2004).

¹⁴³ See Zuckerman, *supra* note 141, at 4.

¹⁴⁴ See Solum, *supra* note 142, at 238.

¹⁴⁵ See JIANG WEI (江伟), *MINSHI SUSONGFA XUE (民事诉讼法学)* [CIVIL PROCEDURAL LAW] 65–66 (2012).

¹⁴⁶ Andrew Langdon QC, INAUGURAL ADDRESS BY ANDREW LANGDON QC CHAIRMAN OF THE BAR 2017, at 10 (Dec. 14, 2016), <https://www.barcouncil.org.uk/uploads/assets/21bd42d3-31fc-404e-89a1aed137ed69a9/Incoming-Chairmans-inaugural-speech-to-the-Bar-Council.pdf> [<https://perma.cc/8QP6-WDUa>] (“Being in the physical presence of a witness or a jury or a defendant or a judge or your lawyers . . . [is] fundamental to our innate sense of how justice should be delivered.”) (“The humanity of physical presence is, I suggest, an important component in the delivery of justice.”).

¹⁴⁷ See JIANG, *supra* note 145, at 65–66; Song Yinghui (宋英辉) & Li Zhe (李哲), *Zhijie Yanci Yuanze Yu Chuanwen Zhengju Guize Zhi Bijiao (直接、言辞原则与传闻证据规则之比较)* [*Comparison Between the Principle of Direct and Verbal Trial and the Rules of Hearsay Evidence*], 5 *Bijiaofa Yanjiu (比较法研究)* [J. COMPAR. L.] 52, 52–53 (2003);

hears the case decides the case, and only evidence directly investigated and challenged before the judge serves as the basis for the judgment.¹⁴⁸ The principle mandates the judge who delivers the judgment to interact directly with the evidence, the parties, and witnesses in the courtroom.¹⁴⁹

However, compared to traditional courts, asynchronous online courts lack face-to-face communication among the parties, witnesses, and judges in physical courtrooms.¹⁵⁰ Furthermore, asynchronous online courts fail to guarantee synonymous interactions like current online courts. As typing is the most often used method to communicate in an asynchronous online court, it impedes the parties from seeing the judge and other participants.¹⁵¹ While “[j]ustice has a human face” rather than a screen,¹⁵² the principle of direct trial could hardly or never be achieved in asynchronous online courts.

This Article argues that asynchronous online courts follow the principle of direct trial. To begin with, the first generation of online courts complies with the principle. The term “court” means an enclosed space.¹⁵³ There is also “cyberspace,” a virtual place that everyone can

Wang Fuhua (王福华), *Zhijie Yanci Yuanze Yu Minshi Anjian Shenli Yangshi* (直接言词原则与民事案件审理样式) [*The Principle of Direct Trial and the Trial Style of Civil Cases*], 1 *Zhongguo Faxue* (中国法学) [CHINA LEGAL SCI.] 69, 69–70, 72 (2004).

¹⁴⁸ *Id.*

¹⁴⁹ See JIANG, *supra* note 145, at 65–66.

¹⁵⁰ See Dame Hazel Genn, BIRKENHEAD LECTURE 2017: ONLINE COURTS AND THE FUTURE OF JUSTICE 5 (Oct. 16, 2017), https://www.ucl.ac.uk/laws/sites/laws/files/birkenhead_lecture_2017_professor_dame_hazel_genn_final_version.pdf [https://perma.cc/8UD5-QVUX]; Chen Hangping, et al. (陈杭平), *Hulianwang Shidai de Anjian Shenli Xingzise – Hulianwang Fayuan Anjian Shenli Wenti Yantaohui Zongshu* (互联网时代的案件审理新规则——互联网法院案件审理问题研讨会综述) [*New Rules for Case Trial in the Internet Era – Summary of the Seminar of Internet Court Case Trial Issues*], 22 *Renmin Fazhi* (人民法治) [PEOPLE RULE L.] 93, 94 (2018).

¹⁵¹ See Natalie Byrom et al., *The Impact of COVID-19 Measures on the Civil Justice System*, CIV. JUST. COUNCIL 53 (May 2020), <https://www.judiciary.uk/wp-content/uploads/2020/06/CJC-Rapid-Review-Final-Report-f.pdf> [https://perma.cc/63JV-F8Y5] (explaining that although the survey responded to online courts rather than asynchronous online courts, asynchronous online courts also possess the disadvantages online courts have).

¹⁵² Langdon QC, *supra* note 146, at 11.

¹⁵³ See Cambridge Univ. Press, *Court*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/court> [https://perma.cc/ZX22-EN82].

access.¹⁵⁴ Traditional physical courts can extend to cyberspace¹⁵⁵: online courts, including asynchronous online courts, can be recognized as courts in cyberspace, as all functions of traditional courts are preserved. The main difference between a traditional and an online court is that participants in the judicial proceedings appear in virtual courtrooms instead of physical ones. The first generation of the Hangzhou Internet Court excludes asynchronous features and holds synchronous videoconferences.¹⁵⁶ The first generation provides an online version of face-to-face communication because all participants are present in a virtual courtroom like they are gathering in the physical courtroom.¹⁵⁷ The first generation of online courts strictly follows the principle of direct trial.

The same is true for the second generation of online courts (i.e., asynchronous online courts). Participants in asynchronous online courts primarily use texts and pictures to interact, unlike the current online courts, which still provide synchronous meetings. Even though face-to-face communications change to screen-to-screen communications, the core of the principle of direct trial remains to be followed: let the decider hear the case and decide the case herself.¹⁵⁸ In asynchronous online courts, judges are always the listeners and deciders of cases, because they hear all arguments and review all evidence by themselves, and the final judgment is concluded based on asynchronous trials. The public may seek the help of asynchronous online courts as if they were seeking the same help from traditional courts. Laypeople may submit pleadings, exchange evidence, present their arguments, and get decisions in the new courts. Every

¹⁵⁴ See David R. Johnson & David Post, *Law and Borders—The Rise of Law in Cyberspace*, 48 STAN. L. REV. 1367, 1378–79 (1996) (“Conceiving the Cyberspace as a distinct ‘place’ for purposes of legal analysis by recognizing a legally significant border between Cyberspace and the ‘real world.’”) (“Treating Cyberspace as a separate ‘space.’”).

¹⁵⁵ See SUSSKIND, *supra* note 2, at 56 (“As we move from physical courtrooms to virtual hearings and online courts, we need not jettison this meaning.”).

¹⁵⁶ See Xiao Jianguo (肖建国) & Ding Jinyu (丁金钰), *Lun Woguo Zaixian “Situjiatē Moshì” de Goujian – Yi Hulanwang Fayuan Yibu Shenli Moshì Wei Duixiang de Yanjiu* (论我国在线“斯图加特模式”的建构——以互联网法院异步审理模式为对象的研究) [*On the Construction of China’s Online “Stuttgart Model” – A Study on the Internet Court’s Asynchronous Trial Model*], 456 *Falü Shiyong* (法律适用) [J.L. APPL.] 96, 98 (2020).

¹⁵⁷ See *id.*

¹⁵⁸ See Liu Xuezai (刘学在), *Lun Minshi Susong Zhong de Zhijie Yanci Yuanze* (论民事诉讼中的直接言词原则) [*Discussion on the Principle of Direct Trial and Verbal Trial*], 31(6) *Zhongnan Minzu Daxue Xuebao* (Renwen Shehui Kexue Ban) (中南民族大学学报(人文社会科学版)) [J.S.-CENT. U. NAT’L (HUMAN. SOC. SCI.)] 111, 112 (2011).

asynchronous online court step has the same legal effect as the step finished in traditional courts and the first generation of online courts.¹⁵⁹

Some would say it is difficult to know if judges would carefully review all arguments and evidence before the screen or pretend to hear the case.¹⁶⁰ Nevertheless, it is also impossible to tell if the judge is sitting still and thinking about breakfast in the physical courtroom. The process of how a judge comes to a decision is hard to learn, and it is well known that the judge will decide relying on her intuition about the case.¹⁶¹ After all, what a judge had for breakfast could be a deciding factor in a case's result.¹⁶² The capacity of judges is the key, and this problem bothers both asynchronous online courts and traditional courts. It is improper to take a transcendent view to require asynchronous online courts to achieve perfect justice.¹⁶³

2. Principle of Verbal Trial

The principle of verbal trial is more controversial than the principle of direct trial when applied to asynchronous online courts. It is another principle under the civil law system, requiring the parties and their legal representatives, witnesses, and judges to present their opinions in courts orally.¹⁶⁴ No judgment shall be concluded without verbal debate before the judge, and only statements verbally debated before the judge shall become the basis of a judgment.¹⁶⁵ Although there is no legal principle called the principle of verbal trial in the common law system,

¹⁵⁹ See ONLINE LITIGATION RULES OF THE PEOPLE'S COURTS, *supra* note 136, art. 1(2) (2021) (“Zaixian susong huodong yu xianxia susong huodong juyou tongdeng falü xiaoli.”) (在线诉讼活动与线下诉讼活动具有同等法律效力。) (“Online litigation shall have the same legal effect as offline litigation.”) (explaining courts in different countries recognize the legal effect of online proceedings. For example, China writes it into law.)

¹⁶⁰ See SUSSKIND, *supra* note 2, at 197.

¹⁶¹ See Joseph C. Hutcheson Jr., *Judgment Intuitive: The Function of the Hunch in Judicial Decision*, 14 CORNELL L. REV. 274, 274–75 (1929).

¹⁶² See Roscoe Pound, *The Decadence of Equity*, 5 COLUM. L. REV. 20, 21 (1905) (“[T]he oriental *cadi* administering justice at the city gate by the light of nature tempered by the state of his digestion for the time being.”); Karl Llewellyn, *On Reading and Using the Newer Jurisprudence*, 40 COLUM. L. REV. 581, 592 (1940) (“In the case of a particular judge subject to dyspepsia, the unfortunate effects of a particular ill-advised breakfast do alter the advocate's practical problem.”). However, some scholars perceive that the conclusion is “ridiculous” nowadays. See Dan Priel, *Law Is What the Judge Had for Breakfast: A Brief History of an Unpalatable Idea*, 68 BUFF. L. REV. 899, 901 (2020).

¹⁶³ See SUSSKIND, *supra* note 2, at 207 (“This really is a claim of transcendent justice, preoccupied with identifying a form of ‘perfect justice’ rather than working out how we might overcome the manifest injustices of today's system.”).

¹⁶⁴ See ROSENBERG, SCHWAB & GOTTWALD, ZIVILPROZESSRECHT (德国民事诉讼法) [GERMAN CIVIL PROCEDURE LAW] 549 (Li Daxue (李大雪) trans., 2007).

¹⁶⁵ See Wang, *supra* note 147, at 69–70; Song & Li, *supra* note 147, at 52–53.

the common law system seems to place more emphasis on oral presentation than the civil law system, because oral defense is embedded in the adversarial system.¹⁶⁶

Many contest that all proceedings are conducted by texts and pictures in asynchronous online courts, which eliminates oral proceedings.¹⁶⁷ In the traditional courtroom, what a judge could gain during a trial is not just evidence and statements; the judge could also make more accurate judgments on the authenticity of the parties' statements through the body movement, facial expression, and voice tone of the parties.¹⁶⁸ Even the current online courts preserve oral proceedings. Asynchronous online courts are going too far. The screen-to-screen method deviates from the principle of oral trial, and its essence is a "paper hearing."¹⁶⁹

However, the principle of verbal trial is not absolute. There are exceptions even in traditional courts, and oral trials are becoming less significant in civil litigations. In Germany, the parties may get a decision without holding an oral hearing if they consent, and the judge may order to rule without an oral hearing if necessary.¹⁷⁰ Germany also

¹⁶⁶ See J.A. JOLOWICZ, ON CIVIL PROCEDURE 175–77 (2009).

¹⁶⁷ See Xiao & Ding, *supra* note 156, at 96, 99; Lin Yang (林洋), *Hulianwang Yibu Shenli Fangshi de Fali Sibian Ji Guize Jian'gou* (互联网异步审理方式的法理思辨及规则建构) [*Jurisprudence and Regulation Construction of Asynchronous Trial Models on the Internet*], 4 Gansu Zhengfa Xueyuan Xuebao (甘肃政法学院学报) [J. GANSU U. POL. SCI. & L.] 115, 120 (2020).

¹⁶⁸ See Tao Yang (陶杨) & Fu Mengwei (付梦伟), *Hulianwang Fayuan Yibu Shenli Moshi Yu Zhijie Yanci Yuanze de Chongtu Yu Xietiao* (互联网法院异步审理模式与直接言词原则的冲突与协调) [*The Conflict and Coordination Between Asynchronous Court Trials of the Internet Courts and the Principle of Direct and Verbal Trial*], 471 Falü Shiyong (法律适用) [J.L. APPL.] 163, 164 (2021); LANGDON QC, *supra* note 146, at 10 ("However good the technology, when you are not in fact in the same room, you cannot in the same way judge the mood or the atmosphere.")

¹⁶⁹ See YANG ZIQIANG (杨子强), KANDEJIAN DE ZHENGYI—MINSHI SUSONGZHONG DE YANJIU (看得见的正义——民事诉讼中的言词原则研究) [VISIBLE JUSTICE – A STUDY ON THE PRINCIPLE OF VERBAL TRIAL IN CIVIL LITIGATIONS] 10–12 (2020).

¹⁷⁰ See Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 128, https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html [<https://perma.cc/6J3N-W5P5>] (Ger.) ("(2) The court may give a decision without hearing oral argument provided that the parties have consented thereto; such consent may be revoked only in the event of a material change to the litigation circumstances. The court shall determine, at its earliest convenience, the deadline for written pleadings to be submitted, and shall determine the date of the hearing on which the decision is to be pronounced. A decision given without a hearing for oral argument is inadmissible should more than three (3) months have lapsed since the parties granted their consent. (3) Should nothing but the costs remain to be ruled on, the decision may be given without a hearing for oral argument being held. (4) Unless determined

rolls out a “Stuttgart Model” under which the judge may order the preliminary procedure to be conducted in a written form, then hold one brief oral hearing to resolve the dispute.¹⁷¹ The oral hearing is mainly based on written documents.¹⁷² In China, witness testimonies are frequently delivered in written form rather than orally presented by witnesses themselves.¹⁷³ A Chinese survey shows that only 1.51% of the evidence submitted to a court was purely oral, indicating the insignificance of verbal confrontation.¹⁷⁴ In France, oral hearings are losing their importance because the judges prefer brief oral hearings, and they can stop an oral hearing with discretion.¹⁷⁵ There is a trend to weaken verbal elements even in the traditional in-person courts, and asynchronous online courts follow the trend.

Many participants in civil litigations also treat the principle of verbal trial with indifference or abuse the principle. It can often be seen in Chinese courts where the parties and their legal representatives read the prepared pleading and answer brief in the courtroom, even though the documents were submitted to the judge weeks ago. A survey discloses that the average time for the debating session is less than one-tenth of a full trial in China.¹⁷⁶ Sometimes, the dominant party may take the initiative in its hands and speak all the time, while the other party could

otherwise, decisions of the court that are not judgments may be given without a hearing for oral argument being held.”).

¹⁷¹ See Zivilprozessordnung [ZPO] [Code of Civil Procedure] § 272(2) (“The presiding judge shall either make arrangements for an advance first hearing at which oral argument is to be heard (section 275) or shall have preliminary proceedings conducted in writing (section 276).”); Mike Meier, *Acceleration of Judicial Proceedings: The Example of Germany*, 5 GER. AM. L.J. 79, 85 (1996) (“If the court chooses a written preliminary trial preparation . . . [f]ollowing the written preparation, the so-called ‘main hearing,’ or trial, takes place.”).

¹⁷² See Stephen Goldstein, *Reflections on the Possibilities and Problems of Accelerating the Civil Litigation Process*, 7 TEL AVIV U. STUD. L. 50, 52 (1986).

¹⁷³ See YANG, *supra* note 169, at 92–94.

¹⁷⁴ *Id.* at 94–95 (explaining that the survey was based on 343 civil judgments delivered by the Xiamen Immediate People’s Court and all the primary courts in Xiamen in January 2016).

¹⁷⁵ Loïc Cadiet, *Civil Justice Reform: Access, Cost, and Delay. The French Perspective*, in CIVIL JUSTICE IN CRISIS: COMPARATIVE DIMENSIONS OF CIVIL PROCEDURE 291, 300; Zuckerman, *supra* note 141 (“Most often they take the form of no more than brief oral observations The president of the court has a discretionary power to end the oral hearing when he thinks fit.”).

¹⁷⁶ See Zhang Wusheng (章武生), *Woguo Minshi Anjian Kaiting Shenli Chengxu Yu Fangshi Zhi Jiantao Yu Chongsu* (我国民事案件开庭审理程序与方式之检讨与重塑) [Review and Reshape the Trial Procedures for Civil Cases in China], 184 Zhongguo Faxue (中国法学) [CHINA LEGAL SCI.] 66, 68 (2015).

merely say a few words during a trial.¹⁷⁷ Insisting on the full implementation of verbal trials would bring lengthy procedures and raise litigation costs disproportionately, which is especially true for small claims.¹⁷⁸

While some consider that “[j]ustice has a human face,”¹⁷⁹ studies have shown that instead of helping a judge learn the truth of a case, the gestures and facial expressions of the parties and witnesses are highly likely to deceive the judge.¹⁸⁰ Face-to-face trials expose the age, appearance, clothes, and accent of the parties and witnesses, which all influence the judge’s judgment and may create bias.¹⁸¹ Conversely, the current asynchronous online courts in China and Canada allow the parties and witnesses to send texts and pictures without showing their faces before the judge. The asynchronous character assists the participants in hiding their traits and, thus, reduces potential discrimination from the judge.

Further, some evidence reveals that asynchronous communication works better than face-to-face communication. The new court demands all parties to “speak,” and one party would never be interrupted by the opposite party because of the asynchronous nature.¹⁸² Mediators also indicate that asynchronous communications help stifle unpleasant feelings and promote substantial dispute resolution when the parties do not have equal powers.¹⁸³ Many psychological patients prefer to contact their doctors asynchronously, even if they have to wait hours to receive a response.¹⁸⁴

In short, although asynchronous online courts have breached the principle of verbal trial to some extent, they follow the trend of weakening oral elements, and asynchronous communications could work better than face-to-face communications in some ways.

3. *Worries About Paper Hearings and Litigation Systems*

Scholars in common law countries may worry that asynchronous online courts would shift from an adversarial system to an inquisitorial

¹⁷⁷ See Sela, *supra* note 50, at 338 (“[T]he typical dynamic of the judicial process leads to their systematic silencing.”).

¹⁷⁸ See Tao & Fu, *supra* note 168, at 165.

¹⁷⁹ LANGDON QC, *supra* note 146, at 11.

¹⁸⁰ See Mark Spottswood, *Live Hearings and Paper Trials*, 38 FLA. ST. U. L. REV. 827, 838–40 (2011).

¹⁸¹ *Id.* at 846–48; SUSSKIND, *supra* note 2, at 207.

¹⁸² See Sela, *supra* note 50, at 360.

¹⁸³ See Sternlight & Robbennolt, *supra* note 4, at 763–74.

¹⁸⁴ See SUSSKIND, *supra* note 2, at 212–13.

system, because written hearings would replace debate sessions. Similar worries have arisen in civil law countries where written preparations have already taken an important position.¹⁸⁵

However, establishing a less adversarial court has become the new normal.¹⁸⁶ The jury system, the core of the adversarial system, is fading even in the U.K., which is the birthplace of the adversarial system.¹⁸⁷ It was reported that jury trials applied to only 2% of the cases in the U.K. in 1965,¹⁸⁸ and only about 17,680 cases end in jury trials now in England and Wales each week.¹⁸⁹ The adversarial system is not supposed to create or escalate conflicts between the parties. Instead, the purpose of holding oral hearings is to allow the parties to present their arguments so that the judge can fairly determine the fact and law applicable to the case based on the arguments, which is true for both the adversarial and inquisitorial systems.¹⁹⁰ Oral trials are tools other than the goal.

Some common law countries are promoting asynchronous online courts, continuing to depart from the adversarial culture. The Online Solutions Court, under the construction of the U.K., would allow asynchronous hearings in its third stage. The CRT of British Columbia has been devoted to holding asynchronous hearings for more than five years, and Canadian scholars hope to promote the CRT in other provinces of Canada.¹⁹¹ We will see more asynchronous online courts in common law countries soon. As for civil law countries, especially

¹⁸⁵ For example, some Chinese scholars worry that asynchronous hearings are the same as indirect hearings, which only pursue efficiency and impair the value of civil procedures. See Zhang Weiping (张卫平), *Zaixian Susong: Zhidu Jian'gou Ji Fali—Yi Minshi Susong Chengxu Wei Zhongxin de Sikao* (在线诉讼：制度建构及法理——以民事诉讼程序为中心的思考) [*Online Litigation: Institutional Construction and Jurisprudence—Considerations Centered on Civil Procedures*], 3 *Dangdai Faxue* (当代法学) [CONTEMP. L. REV.] 17, 34 (2022).

¹⁸⁶ See Lord Justice Briggs, *supra* note 13, at 45 (“[T]he concept of a less adversarial, more investigative court is already the norm in most of Europe, and informally practiced by DJs when dealing with disputes involving LiPs in the Small Claims Track.”).

¹⁸⁷ See JOLOWICZ, *supra* note 166, at 377–78.

¹⁸⁸ *Id.* at 378.

¹⁸⁹ A report shows that in the pre-COVID time, around 340 jury trials would be heard each week. If we used the baseline to calculate how many cases were heard by juries each year before the pandemic, the number would be around 17,680. Georgina Sturge, *Court Statistics for England and Wales*, HOUSE OF COMMONS LIBR. 14–15 (Dec. 23, 2021), <https://researchbriefings.files.parliament.uk/documents/CBP-8372/CBP-8372.pdf> [<https://perma.cc/U5TS-AH23>].

¹⁹⁰ See SUSSKIND, *supra* note 2, at 231 (“At the heart of the adversarial system is not the oral hearing but that the arguments are presented from both sides and that a judge sits impartially in deciding between competing accounts of fact and law.”).

¹⁹¹ See Chiodo, *supra* note 65, at 829.

China, it is unwise to pursue intense debates in courtrooms blindly. The written-oriented process has advantages and may be more suitable for modern courts. After all, even the common law countries are heading to a more inquisitorial model.

B. Access to Justice

When it comes to the term “access to justice,” we hope to establish a legal system that is equally accessible to all with easy, cheap, and fast procedures.¹⁹² The first step is to get access to court services. However, the aim is difficult to achieve. Globally, more than 5.1 billion people have hardship getting access to justice.¹⁹³ The traditional court system is not helpful when dealing with numerous disputes. It was estimated that more than 700 million e-commerce disputes occurred in 2015, and the number would rise to a billion within years because of the explosive growth of the global e-commerce market.¹⁹⁴

Although many disputes happen every day, only a limited number of cases can arrive at courts. For instance, less than 1.8% of the cases went to trial in U.S. federal courts in 2002, dropping from 11.5% in 1962.¹⁹⁵ The dispute pyramid often describes this phenomenon,¹⁹⁶ indicating that courts grant only limited access to justice. Less than 17% of the global population went to third parties, including courts, to resolve conflicts.¹⁹⁷ The high litigation costs, complex legal terms, and redundant procedures create barriers to the public visiting local courts.¹⁹⁸

This Article states that asynchronous online courts will improve access to justice because the new courts will lower litigation costs.

¹⁹² See Bryant G. Garth & Mauro Cappelletti, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective*, 27 *BUFF. L. REV.* 181, 182 (1978); Benjamin P. Cooper, *Access to Justice Without Lawyers*, 47 *AKRON L. REV.* 205, 205–07 (2014).

¹⁹³ WORLD JUST. PROJECT, *Global Insights on Access to Justice* 4 (2019), <https://worldjusticeproject.org/sites/default/files/documents/WJP-A2J-2019.pdf> [<https://perma.cc/L5C5-ASJ2>].

¹⁹⁴ KATSH & RABINOVICH-EINY, *supra* note 10, at 67.

¹⁹⁵ Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 *J. EMPIRICAL LEGAL STUD.* 459, 461 (2004).

¹⁹⁶ See Richard E. Miller & Austin Sarat, *Grievances, Claims, and Disputes: Assessing the Adversary Culture*, 15 *L. & SOC’Y REV.* 525, 544 (1980).

¹⁹⁷ See WORLD JUSTICE PROJECT, *supra* note 193, at 7.

¹⁹⁸ See Zuckerman, *supra* note 141, at 11; Garth & Cappelletti, *supra* note 192, at 186–90.

1. *The Costs of Litigation*

The litigation costs under the current court system are so high that it impedes the public from reaching courts. Court justice seems accessible only to the minority group who can afford it.¹⁹⁹ The high cost exists even in high income countries where the court systems are far better than those in low- and middle-income (LMIC) countries.

In Canada, many Canadians are forced to give up chances to pursue court claims because of the expensive costs of litigation. In 2015, the average cost of a two-day civil trial was CAD\$31,330, and a seven-day civil trial was CAD\$81,958,²⁰⁰ while the median after-tax income of Canadian families and single people was CAD\$56,000 in the same year.²⁰¹ It is risky for a layperson to spend half of her annual income only to take a two-day trial.²⁰² In the United States, the median household income was US\$67,521 in 2020,²⁰³ but the estimated average cost for a typical court trial was US\$57,000,²⁰⁴ taking 84% of an American's annual income. In the U.K., people complain that litigation costs are so high and disproportionate that the costs sometimes exceed the value at stake.²⁰⁵

Litigants mainly spend money on traveling, lawyers, and court fees. Traditional courts require in-person hearings, which mandate that parties travel and appear before judges in person. While spending money on traveling, the parties who have jobs may suffer salary losses because courts generally operate during working hours on weekdays,²⁰⁶ which is also true for the current online courts. Further, if the court reschedules a case, the parties have to bear the extra costs of traveling and the opportunity costs themselves.

¹⁹⁹ See Garth & Cappelletti, *supra* note 192, at 183; SUSSKIND, *supra* note 2, at 29–30.

²⁰⁰ Michael McKieman, *The Going Rate*, CANADIAN L., June 2015, at 35, https://www.canadianlawyermag.com/staticcontent/images/canadianlawyermag/images/stories/pdfs/Surveys/2015/CL_June_15_GoingRate.pdf [<https://perma.cc/KCA5-5TP9>].

²⁰¹ STATISTICS CANADA, *Canadian Income Survey 2015* (May 26, 2017), <https://www150.statcan.gc.ca/n1/en/daily-quotidien/170526/dq170526a-eng.pdf?st=-OhfJBV9> [<https://perma.cc/NYY9-2NHW>].

²⁰² See Chiodo, *supra* note 65, at 806.

²⁰³ *Real Median Household Income in the United States*, FRED (Sept. 13, 2022), <https://fred.stlouisfed.org/series/MEHOUNUSA672N> [<https://perma.cc/3A2R-3KN3>].

²⁰⁴ US\$57,000 is for non-death cases, including criminal cases or civil cases. SELF DEFENSE FUND, *How Much Does It Cost to Have a Court Trial?* (2018), <https://www.selfdefensefund.com/wp-content/uploads/2018/12/Cost-Court-Trial-Booklet.pdf> [<https://perma.cc/37BR-MXFQ>].

²⁰⁵ See Zuckerman, *supra* note 141, at 12.

²⁰⁶ See Sela, *supra* note 50, at 352.

By contrast, asynchronous online courts are much friendlier. A smartphone or computer can help the parties resolve a court dispute remotely, as long as they have access to the internet. The remote feature enables the public to save money and time spent traveling. A Chinese report shows that the application of asynchronous trials in the Hangzhou Internet Court saves six hours for the traveling parties on average.²⁰⁷ Although current online courts also enjoy the same advantage, asynchronous online courts further allow one party to communicate with the opposite party and judges whenever and wherever they want, which avoids the situation where office workers are subject to income losses.

Moreover, hiring a lawyer is necessary for many jurisdictions as the legal systems are designed to have legal representatives.²⁰⁸ However, laypeople can hardly afford a lawyer, and self-represented laypeople face challenges because they may not have the requisite knowledge to understand the perplexing legal concepts, complicated civil procedures, and tedious legal documents. Even people who can afford a lawyer may find the attorney's fee costly,²⁰⁹ as it is ordinary for lawyers to complicate the procedures to charge more.²¹⁰ Both the first-generation online courts and traditional courts face this challenge. Conversely, a lawyer may not be a necessity in asynchronous online courts. The future Online Solutions Court is expected to resolve many disputes in its first stage, during which only the system and algorithms would get involved.

Another major consideration for asynchronous online courts is the time cost. The legal maxim says that "justice delayed is justice denied."²¹¹ If a party waits for decades to receive a correct judgment, the judgment remains unjust as it comes too late.²¹²

²⁰⁷ SUPREME PEOPLE'S COURT OF THE PEOPLE'S REPUBLIC OF CHINA, *supra* note 22, at 74 ("A total of 2,495 cases were successfully concluded through this system, saving 6 hours in traveling for litigants each case on average.").

²⁰⁸ See Sela, *supra* note 50, at 336.

²⁰⁹ See KATSH & RABINOVICH-EINY, *supra* note 10, at 41 ("[E]ven individuals of higher income levels have often found that the costs of litigation would exceed its expected benefits where, for example, the amount in dispute is relatively low and the costs associated with litigation are high due to legal uncertainty or reputational stakes.").

²¹⁰ See Zuckerman, *supra* note 141, at 15, 20 ("Lawyers are paid by the hour, regardless of outcome and without an upper limit. The hourly fees vary considerably and can range between £ 80 and £ 300 per hour or even more. Inevitably, this system of remuneration provides an incentive to lawyers to protract and complicate litigation.") ("American lawyers, like their counterparts in England and Australia, charge by the hour.").

²¹¹ *Id.* at 6.

²¹² *Id.*

The traditional court system occasions delay which may be deemed unjust. First, traveling takes time, which would occupy more time if a case were rescheduled, or more than one in-person hearing were mandated. Second, a judge's calendar can be filled quickly, and the parties must wait. This is even true in China, where the time limit for small claims is generally two months, which is comparatively short.²¹³ A party to a small claim case may wait for as long as two months before the case is assigned to a judge due to the caseload.²¹⁴ Third, civil procedures are long and complex. Due to the length of civil procedure, it is common to wait two to three years to receive an enforceable decision from the U.S. district courts.²¹⁵ In Italy, parties may wait as long as ten years to resolve a court dispute.²¹⁶ Likewise, parties may wait 195 weeks for judgment from the British High Court.²¹⁷

Asynchronous online courts help alleviate the time cost problem. No traveling is necessary for asynchronous online courts. Compared to the current online courts, which still mandate synchronous hearings, participants in asynchronous online courts can attend hearings whenever convenient within the given period. The asynchronous feature enables the parties to use their spare time to resolve a case and also permits the judge to have a more flexible calendar, as the judge may handle several cases simultaneously.²¹⁸ The new courts are

²¹³ Zhonghua Renmin Gongheguo Minshi Susong Fa (2021 Xiuzheng) (中华人民共和国民事诉讼法 (2021 修正)) [Civil Procedure Law of the People's Republic of China (2021 Amendment)] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 24, 2021), art. 168 (China) ("Renmin fayuan shiyong xiao'esusong de chengxu shenli anjian, yingdang zai li'an zhiriqi lianggeyue nei shenjie. You teshu qingkuang xuyao yanchang de, jing benyuan yuanchang pizhun, keyi yanchang yigeyue.") (人民法院适用小额诉讼的程序审理案件, 应当在立案之日起两个月内审结。有特殊情况需要延长的, 经本院院长批准, 可以延长一个月。) ["When trying small claims cases, the people's court shall conclude the case within two months from the date of filing. If there are special circumstances that require extensions, it can be extended for one more month with the approval of the president of the court."].

²¹⁴ This information is provided by a judge working the Chaoyang Primary People's Court.

²¹⁵ In 2020, 185,172 civil cases pended for more than one year in the U.S. district courts, accounting for 33.28% of the total cases that year. See U.S. CTS., Table 4.11-U.S. District Courts-Civil Judicial Facts and Figures (Sept. 30, 2020), https://www.uscourts.gov/sites/default/files/data_tables/jff_4.11_0930.2020.pdf [<https://perma.cc/V5ME-MGZA>].

²¹⁶ Zuckerman, *supra* note 141, at 13.

²¹⁷ *Id.* at 16 ("The average time from commencement of proceedings to judgment in the High Court is 161 weeks in London and 195 weeks outside London.").

²¹⁸ See Doron Menashe, *A Critical Analysis of the Online Court*, 39 U. PA. J. INT'L. L. 921, 930 (2018); Maxi Scherer, *Asynchronous Hearings: The Next New Normal?*, KLUWER ARB. BLOG (Sept. 9, 2020), <http://arbitrationblog.kluwerarbitration.com/2020/09/09/asynchronous-hearings-the-next-new-normal/> [<https://perma.cc/5QH5-AQT2>].

designed to avoid tedious proceedings, and the time to resolve a case is shorter. The Hangzhou Internet Court reports that its asynchronous online court enables all case proceedings to be finished within twenty days, saving more than half the time of traditional courts.²¹⁹ It is expected that the time costs will continue to decline.

The litigation costs of money and time are essential to proportionality. The principle of proportionality requires court procedures to “be tailored to the nature of the dispute.”²²⁰ For instance, the court should handle small claims cases in a timely and cost-effective manner because the value of the subject matter and the social influence of such cases are limited.²²¹ However, the current court system fails to provide enough proportionality to small claims.²²² In Italy, the number of civil cases in the first instance has reduced from around 2.5 million in 1894 to 1.3 million in 1994.²²³ This occurred because small claims are almost extinct in Italian courts since litigation costs are so disproportionate to the nature of such cases.²²⁴ The U.K. has similar concerns over disproportionality in civil disputes.²²⁵

Asynchronous online courts bring a balance between the costs and the value at stake. Compared to traditional courts, asynchronous online courts provide simplified procedures, making litigations speedier. The new courts make litigations more affordable by resolving cases asynchronously. Both help achieve the proportionate goal of creating a more efficient, affordable, and accessible court system.

219 Zuigao Renmin Fayuan (最高人民法院), *Zuigaofa Juxing Zhongguo Fayuan de Hulianwang Sifa Baipishu Fabuhui* (最高法举行《中国法院的互联网司法》白皮书发布会) [*The Supreme People’s Court Publishes the White Paper of Chinese Courts and Internet Judiciary*], ZHONGHUA RENMIN GONGHEGUO GUOWUYUAN XINWEN BANGONGSHI (中华人民共和国国务院新闻办公室) [ST. COUNCIL INFO. OFF. P.R.C.] (Dec. 4, 2019), <http://www.scio.gov.cn/xwfbh/qyxwfbh/Document/1669350/1669350.htm> [<https://perma.cc/X6GL-YZ6P>].

220 Chiodo, *supra* note 65, at 811.

221 See SUSSKIND, *supra* note 2, at 82 (“[L]ow value cases or those of modest social significance should be dealt with in good time.”).

222 See SUSSKIND, *supra* note 2, at 85 (“In very low-value cases, and here we draw on arguments of proportionality, it is hard to justify extensive use of lawyers, barely intelligible rules of procedure, and taking days off work for court appearances.”).

223 SERGIO CHIARLONI, *Civil Justice and Its Paradoxes: An Italian Perspective*, in CIVIL JUSTICE IN CRISIS: COMPARATIVE DIMENSIONS OF CIVIL PROCEDURE 267, 270 (Adrian A. S. Zuckerman ed., 1999).

224 *Id.* at 270.

225 Lord Justice Briggs, *supra* note 13, at 17 (“[There are] measures which contribute . . . to the provision of an effective remedy for the adverse effects upon access to justice constituted by the continuing disproportionality between costs and value at risk in large parts of the workload of the civil courts.”).

In summary, asynchronous online courts break the time and space limitations. The new courts permit the parties to participate in trials whenever and wherever they hope within the given period, and coordination of asynchronous online court is less tedious. The second generation of online courts not only improves the efficiency of court litigations but also saves money and time for the parties, providing great convenience to the public.

2. Digital Exclusion

It is worrying that online courts, including asynchronous online courts, will close the door for people who have difficulty accessing the internet. This technological barrier will impede a lot of people's access to justice as the cyber door of the new court is closed to the digitally excluded group.²²⁶ Digital exclusion produces a new barrier.²²⁷

Asynchronous online court antagonists have argued and shown persuasive data to prove digital exclusion. In 2018, more than 5.3 million British adults (10% of the British adult population) had never used the internet or had not used the internet within the last three months.²²⁸ The number of British who had no digital skills was 4.3 million (8% of the British population).²²⁹ Antagonists argue that asynchronous online courts close the gate to justice.

However, antagonists ignore the fact that technology is developing, and the population who can access the internet is escalating rapidly. The newest data in the U.K. show that more than 95% of its population had access to the internet in 2021, and the state has assisted 1.9 million people in casting off digital exclusion within one year.²³⁰ In China,

²²⁶ See Lord Justice Briggs, *supra* note 13, at 37; Catrina Denvir & Amanda Darshini Selvarajah, *Safeguarding Access to Justice in the Age of the Online Court*, 85 MOD. L. REV. 25, 37 (2021).

²²⁷ See AMANDA FINLAY, PREVENTING DIGITAL EXCLUSION FROM ONLINE JUSTICE 2 (2018), <https://files.justice.org.uk/wp-content/uploads/2018/06/06170424/Preventing-Digital-Exclusion-from-Online-Justice.pdf> [<https://perma.cc/WG7W-XVUU>]; Lord Justice Briggs, *supra* note 13, at 37.

²²⁸ See OFF. FOR NAT'L STATISTICS, EXPLORING THE UK'S DIGITAL DIVIDE 2 (2019), <https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/exploringtheuksdigitaldivide/2019-03-04> [<https://perma.cc/86SV-SABJ>].

²²⁹ See LLOYDS BANK, UK CONSUMER DIGITAL INDEX 2018 6 (2018), https://www.lloydsbank.com/assets/media/pdfs/banking_with_us/whats-happening/LB-Consumer-Digital-Index-2018-Report.pdf [<https://perma.cc/XH2Q-WX7N>].

²³⁰ See LLOYDS BANK, UK CONSUMER DIGITAL INDEX 2021 4 (2021), https://www.lloydsbank.com/assets/media/pdfs/banking_with_us/whats-happening/210513-lloyds-consumer-digital-index-2021-report.pdf [<https://perma.cc/XQS3-HCEK>]; LLOYDS BANK, ESSENTIAL DIGITAL SKILLS REPORT 2021 4 (2021), <https://www.lloydsbank.com/assets>

internet users have increased from 0.298 billion in 2008 to 1.011 billion in 2021.²³¹ Predictably, a growing number of people will reach the internet.

The antagonists also fail to examine the age difference. Among the British adults who were digitally excluded in 2018, more than 50% were over seventy-five years old, around 70% exceeded sixty-five years old, and the main reason for not having internet access was “no such need.”²³² As the younger generation grows up, fewer people will be digitally excluded.²³³ Besides, the elderly are learning to use the internet. The Hangzhou Internet Court reported that the number of elderly litigants applying for online trials is increasing by 40% each year, and the eldest litigant was ninety-four years old.²³⁴ The age difference will fade away eventually.

The critic would argue that even though the number of digitally excluded people is decreasing, there will always be a group that is “hard to reach.”²³⁵ They are the most vulnerable group since they tend to be less educated, older, and unemployed.²³⁶ Considerable social concerns shall be given to the group.

Undeniably online courts, including asynchronous ones, might be inaccessible to the “hard to reach” because the group lacks the necessary digital skills and can hardly afford electronic devices.²³⁷

/media/pdfs/banking_with_us/whats-happening/211109-lloyds-essential-digital-skills-report-2021.pdf [https://perma.cc/65RC-XHBJ] (The pandemic has, in fact, accelerated the popularization of the Internet to some extent.).

231 CHINA INTERNET NETWORK INFORMATION CENTER, THE 27TH STATISTICAL REPORT ON INTERNET DEVELOPMENT IN CHINA 15 (2011), <http://www.cnnic.com.cn/IDR/ReportDownloads/201209/P020120904420388544497.pdf> [https://perma.cc/7C9V-KXN3]; CHINA INTERNET NETWORK INFORMATION CENTER, THE 48TH STATISTICAL REPORT ON CHINA'S INTERNET DEVELOPMENT 14 (2021), <https://www.cnnic.com.cn/IDR/ReportDownloads/202111/P020211119394556095096.pdf> [https://perma.cc/Z2BS-TVNW].

232 OFF. FOR NAT'L STATISTICS, *supra* note 228, at 20 (“The most common reason given was that they didn't need it (64%).”).

233 LLOYDS BANK, *supra* note 230, at 13 (A survey shows that “[t]hose aged 60+ have made large increases in their digital engagement.”).

234 Hangzhou Zhongyuan (杭州中院), *Laonian Dangshiren Zuida Nianling 94 Sui, Nianjun Zengzhang 40%, Hangzhou Hulianwang Fayuan Wei Tamen Dingzhile “Budingbao”* (老年当事人最大年龄 94 岁, 年均增长 40%, 杭州互联网法院为他们订制了“补丁包”) [*The Oldest Litigant Is 94 Years Old with an Average Annual Growth Rate of 40% in Senile Litigants - the Hangzhou Internet Court Has Customized a “Patch Pack” for Them*], PENGPAI XINWEN (澎湃新闻新闻) [THE PAPER] (Dec. 8, 2020), https://m.thepaper.cn/baijiahao_10315563 [https://perma.cc/H6AE-T78K].

235 See Fiona Williams et al., *‘Digital by Default’ and the ‘Hard to Reach’: Exploring Solutions to Digital Exclusion in Remote Rural Areas*, 31 LOC. ECON. 757 (2016).

236 See Denvir & Selvarajah, *supra* note 226, at 46.

237 *Id.*

However, the same group can hardly reach the traditional court system.²³⁸ The expensive and lengthy in-person proceedings make court services unavailable to most people, including the “hard to reach.”

The appropriate solution is to provide additional assistance to digitally excluded people. We can develop court applications for smartphones so that the parties may rely on smartphones rather than computers to resolve disputes. Smartphones tend to be more user-friendly because of their mobility, and the average price of a smartphone is much lower than other types of computers.²³⁹ Some Chinese courts have developed asynchronous court applications for smartphones, and the Hangzhou Internet Court is a typical example.²⁴⁰ Courts may encourage volunteers to be the proxy of the “hard to reach.”²⁴¹ For instance, the elderly can complete a case online under the guidance of specially assigned court staff in the Hangzhou Internet Court.²⁴² Asynchronous online courts will help more vulnerable people reach court resources if sufficient external assistance is guaranteed.

Meanwhile, asynchronous online courts bring great convenience to most people. The popularization of the internet and electronic devices allows most people to file lawsuits and receive court judgments on smartphones and computers without stepping into physical courtrooms. Asynchronous technologies empower laypeople to participate in court trials at low costs, and justice is becoming more accessible than ever.

Additionally, asynchronous online courts may deal with the backlog of court cases. Before the pandemic, courts in many countries had already been overloaded, such as Brazil, waiting to resolve 100 million

²³⁸ See SUSSKIND, *supra* note 2, at 218.

²³⁹ See *How Expensive Is a Smartphone in Different Countries?* ALL FOR AFFORDABLE INTERNET (Oct. 7, 2021), <https://a4ai.org/how-expensive-is-a-smartphone-in-different-countries/> [<https://perma.cc/D7MW-55FA>] (“The average price of a personal computer could be seven times as much as a smartphone. Across the 187 countries studied, we found that the global average cost of a smartphone is . . . US\$104.”); Thomas Alsop, *Average Selling Price of Personal Computers (PCs) Worldwide from 2015 to 2019, in Actual and Constant Currency (in U.S. Dollars)*, STATISTA (Mar. 2, 2020), <https://www.statista.com/statistics/722992/worldwide-personal-computers-average-selling-price/> [<https://perma.cc/HG2Q-BJTD>] (“The average selling price of personal computers in 2019 was 632 U.S. dollars or 733 U.S. dollars in constant currency.”).

²⁴⁰ In China, people can easily file a lawsuit in the asynchronous online court of the Hangzhou Internet Court by using the WeChat mini program created and run by the court. Anyone who can reach WeChat can reach the mini program, which is highly similar to an app.

²⁴¹ See SUSSKIND, *supra* note 2, at 219.

²⁴² See Hangzhou, *supra* note 234.

court cases.²⁴³ The COVID-19 pandemic created more backlog as it is estimated that the backlog of cases increased by about one-third during the pandemic in America²⁴⁴ and 48% in the British Crown Court.²⁴⁵ It is important to find ways to resolve all those cases efficiently. Asynchronous online courts can help by providing simplified and speedy proceedings, convenient communications, and low costs. Laypeople can receive a timely decision now.

To sum up, asynchronous online courts are extending access to justice since most can enjoy the convenience brought by asynchronous online courts. As for digitally excluded groups, the new court could roll out new services so that even the “hard to reach” can access more court resources than before. With the construction and popularization of the internet, the digital divide will be crossed eventually.

C. Transparency

Transparency is another principle under civil procedure law. In centuries past, court works were held in secrecy without public observation, and hearings were hidden from the public.²⁴⁶

Today, courts run under the people’s scrutiny, which mandates courts to be transparent.²⁴⁷ In addition, public hearings bring judges and courts under public scrutiny.²⁴⁸ Being seen is crucial to procedural transparency as it strengthens the fairness and credibility of court activities.²⁴⁹ Accordingly, courts are required to disclose the procedures of case resolution, case records, court hearings, and final judgments to society.²⁵⁰ Specifically, the public should know the specific procedures for making decisions and how court judgments are

²⁴³ SUSSKIND, *supra* note 2, at 9.

²⁴⁴ *The Impacts of the Pandemic on State & Local Courts*, THOMSON REUTERS (2021), <https://legal.thomsonreuters.com/en/insights/reports/impacts-of-the-pandemic-on-state-local-courts/form?gatedContent=%252Fcontent%252Ffewp-marketing-websites%252Flegal%252Fgl%252Fen%252Finsights%252Freports%252Fimpacts-of-the-pandemic-on-state-local-courts> [https://perma.cc/J6QT-BL78].

²⁴⁵ NAT’L AUDIT OFF., REDUCING THE BACKLOG IN CRIMINAL COURTS, 2021, HC 732, at 4 (UK), <https://www.nao.org.uk/wp-content/uploads/2021/10/Reducing-the-backlog-in-criminal-courts.pdf> [https://perma.cc/SK5H-4B6V]. (The time is from Mar. 31, 2020, to June 30, 2021).

²⁴⁶ See Judith Resnik, *Bring Back Bentham: “Open Courts,” “Terror Trials,” and Public Sphere(s)*, 5 L. & ETHICS HUM. RTS. 4, 23 (2011); YANG, *supra* note 169, at 24–29.

²⁴⁷ See SUSSKIND, *supra* note 2, at 79 (“This requires that the work of our courts should be transparent on various levels. It demands a clear window on the court system.”).

²⁴⁸ See Resnik, *supra* note 246, at 4.

²⁴⁹ See Genn, *supra* note 150, at 13.

²⁵⁰ See SUSSKIND, *supra* note 2, at 79–80.

rendered.²⁵¹ Laypeople may attend an open trial even if they are not a party to the dispute, and the media should also be permitted to attend the hearing and report the whole process of the trial. On the other hand, transparency demands the court to disclose its daily operation, such as the budget and caseload, to the masses.²⁵²

There is an argument that online courts threaten judicial transparency because they impede public access to court trials.²⁵³ As online courts hold virtual trials, only relevant parties could enter the virtual courtroom, and there would be no public hearings as laypeople and media could no longer attend any court hearings. Asynchronous online courts worsen the situation because trials are sporadic and asynchronous, enhancing the hardship for the public to know what happened in a virtual chatroom. People worry that trials will be held in camera as centuries ago, leading to unfairness and injustice.

This Article argues that the worries are overstated. First, like the principle of verbal trial, holding public hearings is not an absolute principle. For example, open hearings are not mandated in cases involving national security, juvenile crimes, and personal privacy.²⁵⁴ Second, asynchronous online courts are currently primarily applicable to small claims, but there are almost no hearers to those disputes, even in traditional courts.²⁵⁵ Therefore, a public hearing requirement for small claims or other easy cases has limited usefulness. Third, the current court system provides only limited transparency. It is difficult, if not impossible, to know how a judge decides the current legal system.

²⁵¹ Tom R. Tyler & Justin Sevier, *How Do the Courts Create Popular Legitimacy? The Role of Establishing the Truth, Punishing Justly, and/or Acting Through Just Procedures*, 77 ALBANY L. REV. 1095, 1106 (2014) (“Transparency or openness about what the rules and procedures are and how decisions are being made facilitates the belief that decision making procedures are neutral when it reveals that decisions are being made in rule based and unbiased ways.”).

²⁵² See SUSSKIND, *supra* note 2, at 79.

²⁵³ See Lord Justice Briggs, *supra* note 13, at 37 (“[O]nline justice threatens a loss of open justice and transparency.”).

²⁵⁴ Such as China. Civil Procedure Law of the People’s Republic of China (2021 Amendment), *supra* note 213, art. 137 (“Renmin fayuan shenli minshi anjian, chu sheji guojiamimi, geren yingsi huozhe falü lingyou guiding de yiwai, yingdang gongkai jinxing. Lihun anjian, sheji shangyemimi de anjian, dangshiren shenqing bugongkai shenli de, keyi bugongkai shenli.”) (人民法院审理民事案件，除涉及国家秘密、个人隐私或者法律另有规定的以外，应当公开进行。离婚案件，涉及商业秘密的案件，当事人申请不公开审理的，可以不公开审理。) [“The People’s Court shall hold trials in public, unless the case involves state secrets, personal privacy, or otherwise provided by law. In divorce cases and cases involving trade secrets, court trials may be held in camera if the parties apply for such a trial.”].

²⁵⁵ See SUSSKIND, *supra* note 2, at 200 (“I hear from judges and officials in England and Wales, however, that the attendance rate is very low, bordering on negligible.”).

For instance, it is common in China for a judgment to have only two or three pages, and the reasoning part may not take up more than 10% of the whole judgment; in other words, only a few sentences explain the reasoning for the decision.²⁵⁶ The solution is to improve judges' capability rather than blindly refusing asynchronous online courts.

Moreover, it is practical for asynchronous online courts to embrace public hearings. The new courts still require advance notice of hearings, which may include virtual courtroom links. For instance, the Beijing Internet Court has already spelled out that the public and media can attend online hearings.²⁵⁷ China has established a website to publish information on living trials, and laypeople may watch trials on smartphones and computers.²⁵⁸ Some would challenge that the website is for in-person hearings rather than online ones. Nevertheless, we may learn from it. Asynchronous online courts can publish the web links to enter the virtual chatrooms on a designated website so that the public can watch real-time paper hearings. Because asynchronous online trials are sporadic, more people can use their spare time to attend a trial now. Reading the real-time recording would be as easy as reading an e-book, enhancing transparency.

Most importantly, asynchronous online courts grant more transparency than traditional courts and even the first generation of

²⁵⁶ Zhou Guangquan (周光权), *Panjue Chongfen Shuoli Yu Xingshi Zhidao Anli Zhidu* (判决充分说理与刑事指导案例制度) [*Sufficient Reasoning of Judgment and Criminal Guiding Case System*], 339 *FALÜ SHIYONG* (法律适用) [J.L. APPL.] 2, 8 (2014).

²⁵⁷ See Rules of Online Litigation Trials of Beijing Internet Court (Trial), *supra* note 135, art. 23 (“(1) Fayuan ying tongguo guanfang wangzhan xiang gongzhong gongkai kaiting xinxi. Chu yifa bugongkai shenli anjian huo qita teshu yuanyin wai, tingshen yingdang tongguo xianshang fangshi gongkai jinxing. Tingshen huodong yunxu meiti, gongzhong zaixian pangting.”) (“(1) 法院应通过官方网站向公众公开开庭信息。除依法不公开审理案件或其他特殊原因外，庭审应当通过线上方式公开进行。庭审活动允许媒体、公众在线旁听。”) [“The people’s court should make court information available to the public in the official websites. Except for cases that shall not be publicly heard in accordance with the law or for other special reasons, court trials shall be conducted to the public online. The media and the public may attend trials online.”]. (“(2) Meiti, gongzhong ying tongguo zhongguo tingshen gongkaiwang, benyuan susong pingtai pangting zaixian tingshen, dan weijing xuke, bude zhibo tingshen.”) (媒体、公众应通过中国庭审公开网、本院诉讼平台旁听在线庭审，但未经许可，不得直播庭审。)) [“The media and public should attend an online trial through the China Court Trial Open Network and the court’s litigation platform, but a live broadcasting of a trial is not allowed unless permitted.”].

²⁵⁸ See *Zhongguo Tingshen Gongkaiwang* (中国庭审公开网) [China Court Trial Online], <http://tingshen.court.gov.cn/> [<https://perma.cc/3RKK-YZHA>]. (The website, China Court Trial Online, covers all courts in China. It publishes the information of a case that is to be broadcasted live, including the name of the parties and judges, the time and location of the trial, the case number, and the cause of action. Rebroadcast of some cases is available on the website. However, the broadcasted cases are for in-person trials).

online courts. Almost all records are in the form of texts and pictures in the new courts, which are easy to preserve electronically. The detailed processes of how to resolve a specific case are traceable. If the electronic recordings were open to the public, a higher level of transparency would be achieved. Even if some records could not be disclosed, the insiders working in the judicial system must always be permitted to trace all e-records, ensuring inner transparency.

Although asynchronous online courts have transparency deficiencies, traditional courts also have similar deficiencies. Asynchronous online courts, however, could achieve a higher level of transparency by allowing laypeople to attend virtual trials and providing all court e-records. The new court will furnish more open justice based on its remoteness.

D. Court Rituals

Some scholars state that court rituals fundamentally enhance public trust and confidence in the court system.²⁵⁹ Traditional court trials are held in physical courtrooms with special designs.²⁶⁰ The parties are required to follow the dress code when entering into the physical court, all participants in judicial proceedings need to take an oath, gavels are frequently used, and judges wear robes and even hairpieces—all are designed to create a serious atmosphere in courts so that the parties feel deterred.²⁶¹ People worry that online courts, including asynchronous online courts, will abandon court rituals, and the theatrical character of trials will lead to a loss of majesty.²⁶²

While synchronous online courts may overcome the problem by developing an immersive system under which participants may take a

²⁵⁹ Genn, *supra* note 150, at 5–6.

²⁶⁰ See Meredith Rossner, *Remote Rituals in Virtual Courts*, 48 J.L. & SOC'Y 334, 343 (2021); Susan A. Bandes & Neal Feigenson, *Virtual Trials: Necessity, Invention, and the Evolution of the Courtroom*, 68 BUFF. L. REV. 1275, 1311 (2020).

²⁶¹ See Zuo, *supra* note 32, at 161, 167; Langdon QC, *supra* note 146, at 10 (“Most of us . . . instinctively understand the solemnity or . . . the ‘majesty’ of the law. The historic prominence of a court building in the municipal setting demonstrates that our ancestors understood it.”); Fabien Gelinat et al., *Architecture, Rituals, and Norms in Civil Procedure*, 32 WINDSOR Y.B. ACCESS TO JUST. 213, 217–18 (2015); Rossner, *supra* note 260, at 350 (“A court building incorporates a range of symbols outside a courtroom. Walking up the front steps, going through security, navigating the building, sitting in the waiting areas: these encounters cue one for the justice ritual that unfolds inside the courtroom. In the idealized account, entrances, corridors, and waiting areas represent both a kind of majesty and a reminder that this is a civic space where democratic practices take place.”).

²⁶² See Bandes & Feigenson, *supra* note 260, at 1326–27.

virtual trial as if they are taking an in-person trial,²⁶³ an asynchronous online court could hardly produce similar systems as it has only texts, pictures, voice messages, and pre-recorded materials. The asynchronous courtroom in the Hangzhou Internet Court is almost identical to a WeChat group chatroom, and here there is no robe, gavel, hairpiece, or majestic building. The parties and witnesses might not tell the truth the same way they used to in the face-to-face courtroom because they no longer testify under ritual pressure.

Nevertheless, the adverse effects are overestimated for several reasons. First, many physical courts are not as majestic as expected,²⁶⁴ thus, the pressure brought by majestic court buildings is limited. Even the courts in New York City are in unsanitary conditions in 2021.²⁶⁵ By contrast, the electronic interface of asynchronous online courts is always clean and neat. Second, the use of court rituals to deter the parties deserves discussion. The modern court system is abandoning traditional rituals with the improvement of codified laws.²⁶⁶ Judicial majesty must be based on the advanced fact-discovery method and precise legal application rather than relying on rituals. Court rituals are no more than an influencing factor of court majesty. Asynchronous online courts can ensure judicial majesty so long as the judge discovers the facts and applies the law correctly.

E. Frivolous Lawsuits?

As asynchronous online courts make courts more accessible and affordable, there are concerns that a flood of litigation would head into courts, including numerous frivolous lawsuits.²⁶⁷ This would vastly increase the backlog of cases and create a litigious culture.

²⁶³ As early as 1997, Professor Susskind was shown a videoconference system which had an immersive system. See SUSSKIND, *supra* note 2, at 255 (“[W]e sat at a table that abutted a wall with a large screen, projected onto which were a group of people also sitting at a table. They were actually seated in a neighboring room. But it looked and felt as though their table was an extension of ours, and that we were in fact gathered around one and the same table.”).

²⁶⁴ *Id.* at 208 (“Many of our modern courts are far from majestic, certainly not the canteens of chrome and pale laminate.”).

²⁶⁵ See Molly Crane-Newman, *NYC Courthouses Are in Decrepit and ‘Historically Unsanitary’ Condition, Photos Show*, N.Y. DAILY NEWS (July 11, 2021, 11:00 PM), <https://www.nydailynews.com/new-york/manhattan/ny-oca-dcas-nypd-doc-holding-cells-filthy-court-part-areas-health-risk-covid-20210713-kegid67syzgbvc56stvgc3r7iq-story.html> [<https://perma.cc/3SZT-GL5Z>].

²⁶⁶ See Lin, *supra* note 167, at 119–20.

²⁶⁷ See Menashe, *supra* note 218, at 930.

However, is it good to have fewer court disputes? Remember Italy, where civil cases dropped from 2.5 million to 1.3 million. The disappeared cases were mainly small claims where the costs were highly disproportionate. The number of Italians who were forced to give up their right of action could hardly be known. A court system that refuses cases by raising litigation costs restricts people's access to justice. By contrast, asynchronous online courts enable more people to reach court resources.

The proper solution is to produce specific mechanisms to prevent frivolous lawsuits from flowing into the new courts. Imposing a prepositive mediation procedure before an asynchronous case reaches a judge would be practical. Mediators could be obligated to identify frivolous lawsuits and keep them out of the formal courtroom. The Hangzhou Internet Court and the Online Solutions Court require prerequisite mediation, and we can empower mediators to exclude frivolous cases.

IV LEGISLATIVE SUGGESTIONS

Asynchronous online courts combine the features of both ODR and online courts. Compared to ODR, the new court is more authoritative since formal courts conclude the decisions. Compared to traditional physical courts and current online courts, asynchronous online courts can provide more affordable and efficient services because the parties can resolve a dispute whenever and wherever they wish, and lawyers are often optional.

This Article proposes that asynchronous online courts become the next generation of online courts, and this Part provides legislative suggestions on establishing the courts.

A. Scope of Application

This Article suggests that asynchronous online courts should apply to small claims, procedural claims, and some foreign-related cases.

Small claims are suitable for asynchronous online courts by nature. The number of cases is large, the complexity of cases is low, the value of subject matters is small, and the parties covered are often laypeople. Asynchronous online courts provide proportionate services that are inexpensive and convenient, which matches the nature of small claims. Asynchronous online courts in Canada, the U.K., and China all

embrace small claims, further proving that the new courts' jurisdiction can cover small claims.

Asynchronous online courts can also resolve procedural claims. Since the COVID-19 pandemic began, some British courts have held procedural hearings online.²⁶⁸ A survey shows that most respondents who have participated in such hearings agreed that online hearings “were most appropriately used for procedural hearings.”²⁶⁹ Although the survey was conducted for synchronous online courts, asynchronous online courts can learn from it and extend their jurisdiction to procedural claims. Generally, procedural cases involve a great deal of paperwork, and such cases' complexity is even lower than small claims. Singapore has permitted processes and hearings concerning some summonses to be conducted asynchronously.²⁷⁰ As asynchronous online courts primarily embrace paper hearings; it is proper for them to hear procedural claims.

Some foreign-related cases should fall into the asynchronous online courts' jurisdiction. With the development of e-commerce, disputes with foreigners have become increasingly common.²⁷¹ However, cases

²⁶⁸ Holding remote civil hearings becomes the dominant approach when resolving a court case in the U.K., and only a limited number of civil hearings are “being conducted face-to-face.” Byrom, Beardon & Kendrick, *supra* note 151, at 5. See also VALUATION OFF. AGENCY, *Rating Manual Section 7: Litigation* (Aug. 2, 2022), <https://www.gov.uk/guidance/rating-manual-section-7-challenges-to-the-rating-list/part-2b-remote-hearings-england-and-wales> [<https://perma.cc/675W-BYD9>] (England will “continu[e] online hearings in all but exceptional cases.”) (In Wales, “[t]he conduct of a hearing is covered by VTW Best Practice Protocol 2A which sets out the presumption that all parties will attend by video link, unless a party indicates that they wish to attend physically at the tribunal’s hearing location.”).

²⁶⁹ The survey was conducted in the U.K. during the pandemic. Some British courts applied online proceedings to procedural hearings. Byrom et al., *supra* note 151, at 53.

²⁷⁰ See REGISTRAR’S CIRCULAR NO.11 OF 2020, REGISTRAR’S CIRCULAR NO.12 OF 2020, *supra* note 105.

²⁷¹ For example, from 2012–2019, many Chinese cross-border e-commerce enterprises were sued in the United States for IP infringement. Yi Jiming (易继明), *Kuajing Dianshang Zhishichanquan de Yingdui—Yi Zhongguo Dianshang Zai Mei Beisu Weili* (跨境电商知识产权风险的应对——以中国电商在美被诉为例) [*How to Respond to Cross-Border E-Commerce IP Risks: Taking Chinese E-commerce Enterprises Being Sued in the U.S. as an Example*], 1 *Zhishichanquan* (知识产权) [INTELL. PROP.] 36, 37 (2021) (“2014 nian zhi 2019 nian zhijian, meiguo ge lianbang diqu fayuan shouli le shuyiqianji de zhiming pinpaishang su geguo kuajingdianshang shangbiaoqinquan de anjian. Qizhong, zhongguo wei zhongdian quyue, suosheji de pinpaishang zhishao you 97 jia. Zai moupinpai de yici fanjiamao susong zhong, zhongguo jingnei de beigao jiuyou 1,549 ming (an wangzhan he dianshang pingtai zhanghu jisuan), fayuan quexi panjue le 2 yi meiyuan de peichangjin.”) (2014 年至 2019 年之间，美国各联邦地区法院受理了数以千计的知名品牌商诉各国跨境电商商标侵权的案件。其中，中国为重点区域，所涉及的品牌商至少有 97 家。在某品牌的一次反假冒诉讼中，中国境内的被告就有 1549 名(按网站和电商平台账户计算)，法院缺席判决了 2 亿美元的赔偿金。)[“Between 2014 and 2019, U.S. federal district courts accepted thousands of lawsuits against companies that own well-known

involving foreigners are troublesome. The parties are in different countries with different time zones.²⁷² Completing service abroad may take several months, not to mention the travel and accommodation fees.²⁷³ The litigation costs for some easy lawsuits would be extremely disproportionate when applying traditional in-person hearings. Asynchronous online courts could assist in dealing with easy foreign-related cases. We may learn from the Chinese OLR and follow its regulations which provide that asynchronous proceedings are applicable only if the parties cannot participate in synchronous trials, have no disputes over the facts and evidence of the case, and have consented to apply.²⁷⁴ The new courts would enable foreigners to handle an easy dispute in various places asynchronously and receive service instantly.²⁷⁵

In addition, other types of cases may apply asynchronous proceedings if certain requirements are met. Nevertheless, as the asynchronous online court remains a new creature and many challenge

brands for trademark infringement in cross-border e-commerce in various countries. Among them, China is a key region, and at least ninety-seven brands are involved. In a brand anti-counterfeiting lawsuit, there were 1,549 defendants in China (calculated by website and e-commerce platform accounts), and the court awarded \$200 million in damages in absentia.”].

²⁷² See Scherer, *supra* note 218 (“[O]ne major issue relates to the participants’ different time zones. Many remote hearings protocols, such as from the ICC or VIAC, and best practice guidelines by practitioners and regional initiatives, advise to take this issue into account.”).

²⁷³ An American may wait for twelve months or longer to successfully serve in China. Aaron Lukken, *How to Serve Process in China (updated 2022)*, HAGUE L. BLOG (2022), <https://www.haguelawblog.com/2017/01/serve-process-china/> [https://perma.cc/P569-EFGG] (“It may take a while—likely 12 months from submission to return of proof, it not more. [Update: The COVID-19 pandemic has extended this projection to nearly *two years* in some cases.”]).

²⁷⁴ ONLINE LITIGATION RULES OF THE PEOPLE’S COURTS, *supra* note 136, art. 20.

²⁷⁵ Take Shanghai Jinshan Primary People’s Court as an example. The court resolved a contract dispute in August 2021 between a Chinese company and a Chinese person who lives in Panama. Because Panama has a thirteen-hour time difference with China, asynchronous online trial was employed so that both parties need not stay up to participate in the trial. The case took less than twenty days to be resolved (from case registration to court-led mediation), and the e-service took only ten minutes. See Jinshan Financial Media Center (金山区融媒体中心), *Jinshan Fayuan Shouci Caiyong “Fei Mianduimian, Fei Tongbu” Yibu Shenli Fangshi Shenjie Anjian, Shixian Quancheng Wuzhizhua Bangong* (金山法院首次采用“非面对面、非同步”异步审理方式审结案件 实现全程网上无纸化办案) [*Jinshan Court Adopted the “Non-Face-to-Face and Asynchronous” Trial Method For the First Time and Achieved Paperless Office*], SHANGHAISHI JINSHANQU RENMIN ZHENGFU (上海市金山区人民政府) [SHANGHAI JINSHAN PEOPLE’S GOV’T], (Aug. 19, 2021), <https://www.jinshan.gov.cn/ywtdt-jzdt/20210819/819278.html#> [https://perma.cc/FQ35-STPC].

its rationale, the application requirements must be strict, and we may also learn from the Chinese OLR's regulations.

B. Proceedings

This Article proposes that all proceedings in asynchronous online courts can be conducted online asynchronously, including case filing, submission, exchange of evidence, court-led mediation, court trial, and service.

First, doing so requires establishing an online platform applicable to both computers and smartphones. Canada, the U.K., Singapore, and China have all developed different online platforms to deal with asynchronous cases. However, most platforms are for computers, and only a few Chinese courts have invented smartphone platforms.²⁷⁶ Platforms suitable for different electronic devices would empower more people to access court resources and, thus, to justice. Therefore, developing applications for smartphones is necessary.

The platform produced by the Hangzhou Internet Court is a good example. Its smartphone application creates courtrooms similar to WeChat group chatrooms. Participants in judicial proceedings may send texts, pictures, voice messages, documents, and pre-recorded materials in the chatroom to complete a trial. The experience can be learned. Smartphone platforms may be designed as instant messaging applications so that parties and judges can interact whenever and wherever they wish. Resolving a court case would be easy since having “small talks” with the opposing party and judge is enough.

Asynchronous proceedings could be divided into three stages. This design mainly follows the Hangzhou approach but also incorporates the experience from the CRT and the Online Solutions Court. Phase one is the registration stage. The platform may classify different cases and provide plain explanations for each type so that a layperson can understand which category her case falls into. To initiate a lawsuit, the plaintiff must register, select the type of dispute, and submit the complaint and evidence on the platform. The defendant must respond within a given period. The system may ask simple questions and

²⁷⁶ For example, there is no special app for the CRT platform, and the parties have to visit the CRT website to complete a suit. See CIVIL RESOLUTION TRIBUNAL, *Home Page*, <https://civilresolutionbc.ca> [<https://perma.cc/3A5D-BK7U>]. The MCOL also fails to create a smartphone platform. See MONEY CLAIM ONLINE, *Home Page*, <https://www.moneyclaim.gov.uk/web/mcol/welcome> [<https://perma.cc/PF4F-UEUD>].

provide free legal suggestions to help the parties understand their cases better. All information is pre-prepared in a standard form.²⁷⁷

After the filing stage, we move to the second stage of mediation. A human mediator (not a judge) would get involved and assist the parties in reaching an agreement. Frivolous lawsuits are supposed to be recognized and swept from the courtroom at this stage. If the parties fail to reach a consensus, it moves to the third stage where a human judge intervenes. The asynchronous judging stage is the core of asynchronous online courts, and how to design asynchronous trials is the key.

This Article recommends the Hangzhou approach. A trial could be divided into two stages: questioning and debating and closing statements. The judge should stipulate a specific period (such as seventy-two hours) for each stage as the time limit. The parties may challenge the evidence, present arguments in the first stage, and give a closing statement in the second stage. They may send texts, pictures, voice messages, documents, and even video recordings on the platform within the given period.²⁷⁸ The judge may simplify the procedures and extend the trial period if necessary. After the trial, the judge should deliver the judgment and serve the parties on the platform in a timely manner.

The asynchronous judging stage should allow public hearings if the case does not involve national security or privacy issues. The advance notice of an asynchronous trial must provide the web link for entering the virtual courtroom and invite the media and public to attend. The court may mute the observers and prohibit unapproved reproduction, but observers are entitled to read the real-time recordings to ensure transparency.

Moreover, all the proceedings should be recorded electronically so that asynchronous online cases are traceable. On the one hand, e-records should be available to all insiders within the judicial system, as inner scrutiny is demanded. On the other hand, the parties must be entitled to review their case records when they challenge the judge's impartiality and the validity of the judge's decision. If possible, disclosing more records to the general public would be favorable.

²⁷⁷ The information is not generated by AI but is input into the system in advance.

²⁷⁸ The use of videos would help asynchronous online courts to follow the principle of direct and verbal trial.

C. Artificial Intelligence

ODR widely applies artificial intelligence (AI) and algorithms to resolve large quantities of cases. eBay and Alibaba have broadly embraced software-assisted processes, and AI has become the real decider of disputes. Most disputes in Alibaba are resolved by machines instead of human beings, which distinguishes ODR from asynchronous online courts. People may wonder if asynchronous online courts should embrace AI and permit AI to be the actual mediator or even judge.

We hope asynchronous online courts could bring more access to justice. It would be ideal if anyone accessing the internet could also access court resources. Thus, it is crucial to build a new court that is cheap, quick, and easy to reach. AI helps achieve this goal. However, this Article proposes that the extensive inclusion of AI and algorithms into asynchronous online courts will be realized in the near future, not now. Human judges will still dominate the incipient asynchronous online courts, and AI would mainly help with pre-mediation work. In the third generation of online courts, AI may replace mediators.

The main reason for the extensive inclusion of AI is that the costs of creating and maintaining an effective AI-judging system nationwide could be extremely high. Even some high-income countries can hardly afford the fiscal burden. For example, Michigan abandoned building up its online court decades ago because of fiscal shortage. It is impractical for LMIC countries to develop such an intelligent system due to the cost. After all, if Michigan cannot afford to do so, it would make sense why LMIC countries would not be able to do so. Although the U.K. has invested a lot to build an online court with AI, the program is delayed, and it is uncertain if the court will be established as expected.

Another concern is that the current AI may play only a limited role. The Online Solutions Court plans to incorporate AI in the first stage. This would assist the user in recognizing a legal claim, categorizing the complaint, and delivering customized recommendations based on the answers provided by the user. However, even if laypeople receive recommendations granted by AI, they will move to the following stages, where human mediators and judges intervene. The new court is also designed to recommend nonjudicial dispute resolution approaches and encourage the parties to handle disputes outside the court. Nevertheless, most laypeople turn to courts because they cannot resolve conflicts by nonjudicial approaches, as courts are unwelcome to most people. The function of current AI could be limited unless it could act comparably to a human lawyer and provide lawyer-like service, but the costs might be doubled or tripled. After all, the

technology is not advanced enough now to provide cheap and high-class legal services.²⁷⁹ When the technology gets a breakthrough in the near future, it might be practical to embrace AI in asynchronous online courts extensively.

CONCLUSION

A new generation of online courts, asynchronous online courts, is coming into our view. The new court is an updated version of online courts that incorporates ODR technologies: it provides public legal services to society by incorporating ODR technologies, and people can resolve court disputes online asynchronously. Before the COVID-19 pandemic, some jurisdictions had started exploring asynchronous online courts, and more asynchronous online courts were established during the pandemic. The CRT in Canada, the MCOL and Online Solutions Court in the U.K., the aCDR in Singapore, the Hangzhou Internet Court, and massive Chinese courts are all examples.

However, people challenge the rationality and legitimacy of asynchronous online courts for several reasons. First, asynchronous online courts violate the principle of direct and verbal trial. However, both principles are not absolute or strictly followed in traditional courts. Asynchronous online courts allow judges to examine the evidence directly, communicate with the parties and witnesses, and deliver judgments based on trials, which follows the core of the principle of direct trial. Even though oral interactions are less common in the new courts, screen-to-screen communications have advantages. For instance, court discrimination would be reduced as asynchronous communications hide the appearance and accent of the parties, and misuse of oral proceedings would be restricted as the parties could no longer interrupt the opposite party or speak all the time. Moreover, the international trend is to reduce oral sessions and increase written sessions in adversarial and inquisitorial systems, and asynchronous online courts follow the trend.

Second, there are concerns over digital exclusion that people would be refused by courts merely because they cannot access the internet. Nevertheless, the concerns are overstated. With the popularization of

²⁷⁹ JOHN ARMOUR & MARI SAKO, *AI-ENABLED BUSINESS MODELS IN LEGAL SERVICES: FROM TRADITIONAL LAW FIRMS TO NEXT-GENERATION LAW COMPANIES?* at 4, 30 (Dec. 16, 2019) (“Limits also remain: client-facing work, and services that are highly tailored to a particular client, are unlikely to be automated any time soon.”) (“[T]here remain—at least for the foreseeable future—limits to [AI’s] capability for those involving creative or social intelligence.”).

the internet and the IT assistance provided by courts and volunteers, digital exclusion will be vastly weakened and even eliminated. Meanwhile, an increasing number of people will benefit from asynchronous online courts as the litigation costs, both in money and time, would be decreased dramatically. Compared to the traditional court system, which creates excessive costs, the new courts enable the public to handle a court case whenever and wherever they want, avoiding traveling, the cost of accommodation, loss of income, and even lawyers.

Third, scholars are suspicious about whether asynchronous online courts could provide enough transparency. The answer is yes. Like traditional courts, asynchronous online courts also permit public hearings, as the web links for asynchronous trials would be published in advance so that the media and public could attend. Further, all proceedings are traceable because they are electronically recorded, providing greater transparency than ever.

Fourth, there are worries that court rituals will lose their place in asynchronous online courts, as the new courts do not need any dress code or specially designed physical courtrooms. Nevertheless, modern courts are not as perfect as expected, and court rituals are becoming less important in practice. As long as a court can find the facts accurately and apply the law correctly, the court majesty will be built up, and it is unnecessary to deter the parties with rituals.

Finally, there are fears that a flood of litigation will come to asynchronous online courts as filing a lawsuit becomes much easier. However, a sound court system should provide enough access to court resources rather than impeding people from reaching court assistance. It is more proper to develop mechanisms recognizing frivolous lawsuits before they flow into courtrooms, such as empowering mediators to exclude frivolous lawsuits from courtrooms.

This Article argues that asynchronous online courts grant more affordable, efficient, accessible, and transparent services to the public when compared to traditional courts and the current online courts. Thus, it is necessary to popularize asynchronous online courts worldwide. Based on the practices in Canada, the U.K., Singapore, and China, this Article proposes suggestions for establishing the new courts. The scope of cases applicable to asynchronous online courts should cover small claims, procedural claims, and some foreigner-related cases. The specific proceedings are further provided, mainly based on China's practice.

The Article finally discusses whether to incorporate AI and algorithms into asynchronous online courts. The costs of building an AI judging system or a high-quality AI guidance system could be unduly high, and the current AI in courts may provide only limited help. Thus, this Article suggests that AI will be embraced in the future, but not now.

Imagine a world where asynchronous online courts have been popularized. After a day's work in the office, a layperson used her smartphone to file a court case against an eBay seller on her way home because the seller's thermos hurt her child. The layperson uploaded all the evidence electronically and submitted her claim. Several days later, the court sent an instant message to her on the platform that the case had been registered and moved to mediation. When the layperson went back home that night, she checked the messages left by the mediator and the seller on the platform. The layperson replied on the platform and then went to watch her child. Before going to sleep, she rechecked the platform and replied to the mediator and seller again.

It took three days to finish the whole mediation. Although the mediation failed, the layperson "saw" her judge on the platform after two weeks. The court process was similar to the mediation process, as the layperson always use her spare time to respond. A week later, the judge delivered a judgment to the layperson, and she received the electronic judgment instantly. The layperson did not spend much time or money during the whole process but received an impartial court judgment in a timely manner.

The layperson could be you and me. This is access to justice. This is justice.