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ST(D)REAMING RESOLUTION: CROWD-BASED STEPPED ONLINE DISPUTE RESOLUTION FOR PROFESSIONAL GAMERS, VTUBERS & STREAMERS

Benjamin Davies*

I. INTRODUCTION

A. BACKGROUND INFORMATION & PROPOSAL

The idea of a “movie star” has changed since the 1920s. Now, a century later, online streamers, Vtubers, or professional gamers (collectively referred to in this article as creators) are arguably movie stars as well.¹ In fact, Amazon’s findings depict a

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¹ See *Vtuber Live Streams*, TWITCH, <https://www.twitch.tv/directory/all/tags/52d7e4cc-633d-46f5-818c-bb59102d9549>; *Vtuber Maker*, STEAM: LIVE3D, https://store.steampowered.com/app/1368950/VTuber_Maker/; Jess Weatherbed, *How to Be a Vtuber*, TECHRADAR, <https://www.techradar.com/how-to/how-to-be-a-vtuber>; see, e.g., PewDiePie, YOUTUBE, <https://www.youtube.com/user/PewDiePie/videos>; Ninja, YOUTUBE, <https://www.youtube.com/c/Ninja>; Welyn, YOUTUBE,

statistically significant uptick in use of Twitch with the onset of the COVID-19 pandemic, indicating over 2.76 million average concurrent viewers of creators on that platform, over 100,000 average concurrent channels, around 8.35 million monthly broadcasts, and 51,500 average Twitch Partners for the 2022–2021 period.² Similarly, YouTube statistics demonstrate a similar trend for the entire platform: 30 million daily users, 38 million active channels (with over 15 million content creators), 2 billion active monthly users, and over 1 billion hours of videos watched daily.³ These two platforms carry the majority of online content and viewers for creators found online in the United States.⁴ Content creators from around the world have similar statistics and growth rates.⁵ While numerous legal and ethical issues exist, the scope of this article is limited to a discussion of creators and their potential shareholders.

However, when events, accidents, online interactions, or even cheating for professional gamers occur during live streams, there are serious long-term consequences that may affect not only the creator's public reputation but their access to different platforms such as YouTube, Twitch, or other service providers where the

<https://www.youtube.com/c/Welyn>; CodeMiko, YOUTUBE,
<https://www.youtube.com/c/CodeMiko>; RubberRoss, TWITCH,
<https://www.twitch.tv/rubberross>; Mree, TWITCH,
<https://www.twitch.tv/mreemusic>; F1nn5ter, *F1nn5terLIVE*, YOUTUBE,
<https://www.youtube.com/@F1nn5terLIVE>; EckhartsLadder,
EckhartsLadder Star Wars, YOUTUBE,
<https://www.youtube.com/@EckhartsLadder/featured>; MXR, *MXR Plays*,
 YOUTUBE, <https://www.youtube.com/@MxRPlays/videos>; Linus Media
 Group, *LMG Clips*, YOUTUBE, <https://www.youtube.com/@LMGClips>;
 MoistCr1TiKaL, *penguinz0*, YOUTUBE,
<https://www.youtube.com/@penguinz0>; LegalEagle, *LegalEagle*,
 YOUTUBE, <https://www.youtube.com/@LegalEagle>; RTGame, *RT Game*,
 YOUTUBE, <https://www.youtube.com/@RTGame>. While these creators
 do not constitute the entire community, they nevertheless offer interesting
 avenues for potential application of the proposal described in this article.

² *Twitch Statistics & Charts*, TWITCHTRACKER, <https://twitchtracker.com/statistics> (last visited Dec. 1, 2022).

³ Sarika, *84 YouTube Statistics You Can't Ignore in 2022*, INVIDEO (Mar. 22, 2022), <https://invideo.io/blog/youtube-statistics/>.

⁴ *Streaming Platforms: A Complete Guide to Leading the Industry*, ENDAVO, <https://www.endavomedia.com/streaming-platforms-a-complete-guide/> (last visited Apr. 12, 2023).

⁵ *Global Digital Content Creation Market Growth at CAGR of 9.5% by 2022–2027 | Research Report by Absolute Reports*, GLOBENEWSWIRE (Feb. 8, 2022, 4:36 ET), <https://www.globenewswire.com/news-release/2022/02/08/2380564/0/en/Global-Digital-Content-Creation-Market-Growth-at-CAGR-of-9-5-by-2022-2027-Research-Report-by-Absolute-Reports.html>.

creator may earn ad, product, and service revenues.⁶ Thus, the market and design of handling these disputes must be revamped with the creator's best interest at heart, because in many cases use of the platform can constitute their entire livelihood and sole revenue source from ads, sponsors, partners, and even publicly traded shareholders.⁷

This is where the areas of law, shareholders' rights, and dispute resolution can intersect to produce—in response to the aforementioned dispute resolution issue for creators—a novel addition and a potential evolving solution: the publicly traded person.⁸ Indeed, Mike Merrill not only became the first person to sell shares in himself to any person at \$1.00 per share for a total of \$100,000.00, but became a living investment with potentially hundreds or thousands of investors who have a right to vote on his lifestyle, life choices, and even whom he dates.⁹ This raises an interesting question for content creators like CodeMiko, PewDiePie, Cloud9, and many others: Can selling shares to one's fanbase and other parties create a superior method to resolve disputes?¹⁰ Is this the way forward, for streamers to not only have individuals own shares but also make service providers (such as Twitch or YouTube) mandatory shareholders who could benefit directly and indirectly from any transactions agreed to by the creators? Could creators and shareholders create a binding dispute resolution process initiated by the shareholder base?

B. THE PROPOSED GOAL OF THE ODR SYSTEM

This article discusses a potential dispute resolution system for the creator's individual shareholders, fanbase, and corporate

⁶ *The Impact of the Creator Economy*, WASH. POST, <https://www.washingtonpost.com/creativegroup/youtube/the-impact-of-the-creator-economy/> (last visited Apr. 12, 2023).

⁷ Jason Gershowitz & Colin Rule, *Applying Information and Communications Technology to Multiparty Conflict Resolution Processes* 1–7 (2012), <http://colinrule.com/writing/acr2012.pdf>.

⁸ See MIKE MERRILL, <https://www.mike-merrill.com/> (last visited Dec. 3, 2022).

⁹ *Id.*; JOEL BAKAN, *THE NEW CORPORATION: HOW “GOOD” CORPORATIONS ARE BAD FOR DEMOCRACY* 107–18 (1st ed. 2020) [hereinafter *NEW CORPORATION*]; Shu-Yi Oei & Diane Ring, *Human Equity? Regulating the New Income Share Agreements*, 68 VAND. L. REV. 681, 699–700 (2015); Emely Garcia, *Fair or Foul: Examining Income Share Agreements in Professional Football and Baseball*, 18 COLO. TECH. L.J. 161, 165–66 (2020); John Gillespie, *Taking the Reins: The Case for Investor Control in Income Share Agreements*, 72 ALA. L. REV. 259, 273–76 (2020).

¹⁰ *NEW CORPORATION*, *supra* note 9, at 107–18.

owners if a dispute arises that could affect the creator's revenue or fanbase. The article is divided as follows: Section II discusses the current online dispute resolution process in the service provider space; Section III presents a proposal to replace the current online dispute resolution system with a superior system with several steps built into it; Section IV reviews several key performance index (KPI) metrics for the new stepped online dispute resolution system; and Section V offers concluding thoughts.

II. THE CURRENT CREATOR DISPUTE RESOLUTION PROCESSES

Dispute resolution for creator disputes is often hard to understand, as some service providers use complicated internal dispute resolution systems.¹¹ In fact, the current method of dispute resolution is shrouded in mystery—who exactly is involved, how are outcomes decided, and what kinds of decisions result?¹² Essentially, this form of online dispute resolution (ODR) is a black box.¹³

As of 2022, YouTube and Twitch regulate their creators by using poorly defined and rather complex terms of service (TOS).¹⁴ Both service providers require all users (including creators) to have adult supervision or permission to use if they are minors.¹⁵ Therefore, this article addresses only disputes by creators who are

¹¹ See, e.g., *Terms of Service*, YOUTUBE, <https://www.youtube.com/static?template=terms> (last visited Feb. 16, 2023).

¹² See, e.g., *id.*

¹³ See, e.g., *How Explaining Copyright Broke the YouTube Copyright System*, N.Y. UNIV. SCH. OF L. (2021), <https://www.nyuengelberg.org/news/how-explaining-copyright-broke-the-youtube-copyright-system/> (last visited Dec. 4, 2022) [hereinafter NYU Copyright]; see also *Online Dispute Resolution in the United States*, AM. BAR ASS'N (AAA), https://www.americanbar.org/groups/centers_commissions/center-for-innovation/online-dispute-resolution-in-us/ (last visited Feb. 13, 2023).

¹⁴ See *Terms of Service*, TWITCH, <https://www.twitch.tv/p/en/legal/terms-of-service/#2-use-of-twitch-by-minors-and-blocked-persons> (Nov. 9, 2022) [hereinafter Twitch TOS]; *Terms of Service*, YOUTUBE, <https://www.youtube.com/static?template=terms> (last visited Feb. 16, 2023) [hereinafter YouTube TOS]. The age of adulthood would differ between countries, but using general U.S. law, this article assumes the age of adulthood to be eighteen years. *Legal Age*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/legal_age (June 2020).

¹⁵ YouTube TOS, *supra* note 14 (requiring supervision of users under age eighteen); Twitch TOS, *supra* note 14 (requiring supervision of minors between age thirteen and age of majority in respective jurisdiction).

over the age of eighteen. Additionally, creators must abide by the TOS for any materials posted on these service providers' platforms, potentially including permissions or restrictions regarding: reposting materials; interfering with the service provider's products; using bots or other automation; collecting users' or fanbases' personally identifiable information; distributing unsolicited ads or materials; using inaccurate measurements of users or fanbases; misusing the dispute resolution system (including appeals); running contests via the service provider's platform; using the service provider's videos for commercial purposes without a license; sending malicious programs or software to parties; and selling ads on the service provider's platform without its permission.¹⁶ Interestingly, neither YouTube nor Twitch provides legal coverage—outside of reasonable means—when users upload their videos for illegal copying and distribution.¹⁷ Furthermore, Twitch protects political activity—within applicable national laws and political contribution limits—but bans inaccurate, unlawful, infringing, defamatory, obscene, pornographic, invading privacy- or publicity-rights, harassing, threatening, abusive, inflammatory, or otherwise objectionable content.¹⁸ All false claims or impersonations, unsolicited mail or ads, email collections, defamation, reverse engineering or damage to the service provider's programs, and any other behaviors which would damage the service provider are also banned.¹⁹ Finally, both service providers require creators to indemnify, hold harmless, and agree to no warranties when using the providers' services.²⁰ Essentially, these rules severely limit what creators can do, say, or express while online, for good legal reasons held by the service providers; however, these restrictions can be abused, hard to track, impossible to enforce across the entire service, and otherwise utilized by bad actors to take legitimate creators offline for any number of reasons.²¹ Even though these rules are strict, all-encompassing, and harsh, YouTube allows

¹⁶ See YouTube TOS, *supra* note 14; Twitch TOS, *supra* note 14.

¹⁷ YouTube TOS, *supra* note 14; Twitch TOS, *supra* note 14. Both TOS for YouTube and Twitch only provide reasonable means coverage, but do not provide any other details about what that means or what kind of legal representation will be provided. See YouTube TOS, *supra* note 14; Twitch TOS, *supra* note 14.

¹⁸ Twitch TOS, *supra* note 14.

¹⁹ YouTube TOS, *supra* note 14; Twitch TOS, *supra* note 14.

²⁰ YouTube TOS, *supra* note 14 (limiting damages to greater of: “(A) the amount of revenue that YouTube has paid to you from your use of the service in the [twelve] months before the date of your notice, in writing to YouTube, of the claim, and (B) USD \$500.00”); Twitch TOS, *supra* note 14 (limiting damages from accessing Twitch to greater of (1) amount paid to creator over preceding twelve months and (2) USD \$100.00).

²¹ YouTube TOS, *supra* note 14; Twitch TOS, *supra* note 14.

creators to bring legal claims in court outside of the ODR methods for channel bans or related claims; conversely, Twitch requires arbitration—via mail service—through Judicial Arbitration and Mediation Services (JAMS).²²

If for any reason the service provider does decide to ban a creator (which can stem from a complaint by a trusted reviewer or viewer of the creator’s content, a copyright claim, or violation of the service provider’s other TOS), there is a rather unique, murky, and poorly defined or understood ODR system currently utilized to handle these situations.²³ For example, YouTube has an instant takedown provision for a video that violates its TOS, but this bifurcates into (1) copyright disputes and (2) all other violations.²⁴

For the first YouTube option, a third party may file a Content ID/copyright claim.²⁵ The website provides a simple approach where the claimant files a report via a button at the bottom of the video.²⁶ Thereafter, the respondent (who posted the video) signs in to their account, clicks “Content” on their page, clicks “Restrictions,” reviews any videos labeled “Copyright Claim,” clicks the “down” arrow on claimed videos, and reviews the section of the video with a claim.²⁷ After this, the respondent could either choose to do nothing, remove the claimed content, share the revenue from the video, or dispute the claim.²⁸ If the respondent disputes the claim—which can be accomplished by clicking on the “Copyright Claim” drop-down and clicking “Dispute”—the claimant has thirty days to respond and may release the claim, reinstate the claim, submit a takedown notice, or let the claim expire without further action.²⁹ If the claimant reinstates their original claim after YouTube renders a decision, the respondent can—if their account is verified—appeal the decision by clicking the “Appeal” button

²² YouTube TOS, *supra* note 14 (including statute of limitations of one year from when cause of action accrues); Twitch TOS, *supra* note 14 (same).

²³ NYU Copyright, *supra* note 13.

²⁴ YouTube TOS, *supra* note 14.

²⁵ *Learn About Content ID Claims*, GOOGLE: YOUTUBE HELP, <https://support.google.com/youtube/answer/6013276> (last visited May 11, 2023).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Copyright Strike Basics*, GOOGLE: YOUTUBE HELP, https://support.google.com/youtube/answer/2814000?hl=en&ref_topic=9282678&sjid=14906752552199237105-NA#zippy=%2Cwhat-happens-when-you-get-a-copyright-strike (last visited May 11, 2023). A valid takedown of a video by YouTube results in a copyright strike against the respondent’s channel. *Id.* If enough strikes are made, the account is permanently removed from the platform. *Id.*

located under the same drop-down for the claimed video.³⁰ At this point, the claimant may choose one of the following options until YouTube renders a final decision: (1) do nothing and let the claim expire; (2) release the claim; (3) request an immediate takedown of the infringing video (which would result in a copyright strike against the respondent's channel); or (4) schedule a takedown request (which would take the video down and prevent a copyright strike from occurring).³¹

It should be noted that this process does not result in any kind of interaction with YouTube other than via the YouTube accounts webpage.³² Also, how YouTube flags, alters, or ultimately decides on takedown requests is unknown.³³ Furthermore, even the claim against New York University School of Law (NYU) was difficult to overturn and required NYU to use backchannel contacts within YouTube to obtain a response to their copyright strike.³⁴ This backdoor approach was similar to Prof. Colin Rule's time at eBay, during which a grandmother, via individual redress, appealed to Prof. Rule to circumvent the dispute resolution process to obtain a refund.³⁵ Both stories hold a secret: The ODR system was flawed and resulted in disputing parties attempting to find ways around the system to resolve their respective disputes even though it placed other parties at an unfair disadvantage.³⁶

As for all other violations, YouTube removes the content without providing a reason outside of a simple comment.³⁷

³⁰ *Id.* It should be noted that an appeal can be cancelled at any time. *Appeal a Content ID Claim*, GOOGLE: YOUTUBE HELP, https://support.google.com/youtube/answer/12104471?hl=en&ref_topic=9282678&sjid=13493926467051292244-NA#zippy=%2Chow-to-cancel-an-appeal (last visited May 11, 2023).

³¹ *Appeal a Content ID Claim*, *supra* note 30.

³² *Copyright Strike Basics*, *supra* note 29.

³³ *YouTube Community Guidelines Enforcement Report*, GOOGLE, <https://transparencyreport.google.com/youtube-policy/removals> (last visited May 11, 2023).

³⁴ NYU Copyright, *supra* note 13.

³⁵ Colin Rule, Professor, Pepp. Caruso Sch. of L.: Straus Inst. for Disp. Resol., Online Disp. Resol. Lecture (Mar. 2022).

³⁶ See generally Benjamin H. Barton, *Rebooting Justice: ODR Is Disrupting the Judicial System*, UTK L. FAC. PUBL'NS (July/Aug. 2018), https://ir.law.utk.edu/cgi/viewcontent.cgi?article=1101&context=utklaw_facpubs.

³⁷ *Troubleshoot Video Takedowns*, GOOGLE: YOUTUBE HELP, <https://support.google.com/youtube/answer/6395024?hl=en> (last visited May 11, 2023) (listing, as reasons for removal: inappropriate content, terms-of-service violation, inclusion of copyrighted content, video takedown, and trademark issue). The same strike process—just with different types of bans—occurs in all other strike regimens and can be

Furthermore, the creator has very few recourse options outside of the ODR method because terms-of-service violations can be hard to overturn if an inadvertent creator posts content unaware that it violates these terms.³⁸ For example, a video depicting bullying and

appealed in a similar manner to YouTube copyright strikes. Noor Kalouti, *How to Deal with Copyright Strikes, Claims, or Being Muted on YouTube, Twitch, TikTok, and More in 2023*, SLIP.STREAM (July 28, 2022), <https://blog.slip.stream/how-to-deal-with-getting-claimed-muted-striker-or-banned-facebbok-twitch-youtube/> (last visited May 12, 2023); Andrew Heaton, *Twitch to Introduce New “Three Copyright Strike” Policy, Sounds Similar to YouTube*, GAMERANT (July 20, 2021); <https://gamerant.com/twitch-three-copyright-strike-policy-youtube/> (last visited May 12, 2023); Madeleine Persson, *Twitch vs YouTube—How Media Logic Affects the Production Process*, MALMO UNIV. 1, 17–26 (Sept. 6, 2021), <https://www.diva-portal.org/smash/get/diva2:1596725/FULLTEXT02.pdf>.

³⁸ This lack of dialogue between YouTube and content creators is best exemplified by the recent TOS changes regarding obscenity and violent content commonly found throughout the YouTube community, and the past three years of flagging, suspending, removing, and demonetizing content creators who were unaware of a YouTube TOS change that involved a retroactive change to include videos even ten years old or older. See YouTube TOS, *supra* note 14; see also *YouTube Community Guidelines Enforcement Report*, *supra* note 33; *YouTube Channel Monetization Policies*, GOOGLE: YOUTUBE HELP, <https://support.google.com/youtube/answer/1311392#zippy=%2Cfollow-the-youtube-community-guidelines%2Cfollow-adsense-program-policies> (last visited May 11, 2023); *YouTube Community Guidelines*, GOOGLE: YOUTUBE HELP, <https://support.google.com/youtube/answer/9288567?sjid=14906752552199237105-NA> (last visited May 11, 2023). The first such large-scale copyright claim involved MXR Plays in January 2020, when Jukin Media flagged numerous MXR react videos as infringing on their copyright without an agreement in place. MXR Plays, *YouTube Has Gotten Rid of Our Ability to Monetize Our Videos*, YOUTUBE (Jan. 20, 2020), <https://www.youtube.com/watch?v=CfEar34eLms>. This policy was further advanced with a January 2023 YouTube TOS change that has angered content creators and demonetized numerous videos or even entire catalogs thereof. *Id.*; MXR Plays, *The Hardest Decision We’ve Ever Had to Make*, YOUTUBE (Jan. 8, 2023), <https://www.youtube.com/watch?v=GPFqVjZb97o>; EckhartsLadder, *I’m Being Stolen from and I Need Help*, YOUTUBE (Dec. 17, 2022), https://www.youtube.com/watch?v=gKRvm_fy_xk; MoistCr1TiKaL, *YouTube Change Is Worse than I Thought*, YOUTUBE (Jan. 4, 2023), <https://www.youtube.com/watch?v=KkIN74s1kMw> [hereinafter *MoistYouChange*]; RTGame, *YouTube Is Restricting My Content*, YOUTUBE (Jan. 7, 2023), <https://www.youtube.com/watch?v=DRsVDZvmaAE>; LegalEagle, *Youtuber Extortion? MxR Plays v. Jukin—Real Law Review //*

how to resolve the situation might be flagged by a trusted reviewer (who may even oversee the appeal by the creator), and the ban would be upheld!³⁹ This is not only untransparent but demonstrates how mysterious YouTube is in handling such disputes.

These same processes exist for Twitch, and are likely less advanced given the size and depth YouTube has over any other company on Earth in this field—let alone the smaller start-up who may have no ODR system in place.⁴⁰

Turning to Mike Merrill’s ODR process, he treated his platform as a start-up with very few, if any, rules.⁴¹ In fact, he would incorporate different ideas when shareholders questioned something about his habits, beliefs, or decisions.⁴² For example, he put a variety of personal choices to a vote: his dating life, diet, subscription habits, entertainment likes, social media presence, financial practices, spiritual beliefs, political positions, sponsorship-tattoo approval, and physical appearance.⁴³ These beliefs and support by shareholders would change overtime, and do so quite often depending on who owns shares in his “person.”⁴⁴ Even though

LegalEagle, YOUTUBE (Jan. 14, 2020), https://www.youtube.com/watch?v=5A_i-sB9H0Q. Furthermore, bad actors who do not own the copyright to music, videos, or other creative mediums have begun predatory practices against content creators by claiming copyrights they have never owned while collecting advertising funds from creators who rightfully earned them without any kind of recourse. MoistYouChange, *supra* note 38; EckhartsLadder, *An Update to the Copyright Situation*, YOUTUBE (Dec. 20, 2022), <https://www.youtube.com/watch?v=Yw6Q3GebmoU>; Linus Media Group, *YouTube’s New Policy . . . WTF?*, YOUTUBE (Jan. 16, 2023), <https://www.youtube.com/watch?v=udNg9qHMUyc>.

³⁹ *Rules and Policies: Community Guidelines*, GOOGLE: YOUTUBE HELP, <https://www.youtube.com/howyoutubeworks/policies/community-guidelines/> (last visited May 11, 2023) (citing “human [trusted] reviewers” and “machine learning” for guideline enforcement where reviewers could easily find videos on YouTube that they will eventually flag and decide on later).

⁴⁰ *DMCA & Copyright FAQ’s*, TWITCH, https://help.twitch.tv/s/article/dmca-and-copyright-faqs?language=en_US (last visited Dec. 4, 2022).

⁴¹ MIKE MERRILL, *supra* note 8; Mike Merrill, *Principles*, NEWS.KMIKEYM.COM, <https://news.kmikeym.com/principles/> (last visited Dec. 4, 2022) [hereinafter Merrill, *Principles*]; Joshua Davis, *Meet the Man Who Sold His Fate to Investors at \$1 a Share*, WIRED (Mar. 28, 2013), <https://www.wired.com/2013/03/ipo-man/>.

⁴² MIKE MERRILL, *supra* note 8; Merrill, *Principles*, *supra* note 41; Davis, *supra* note 41.

⁴³ MIKE MERRILL, *supra* note 8.

⁴⁴ *Id.*; *Community Trough Capitalism*, KMIKEYM, <https://kmikeym.com/> (last visited Dec. 10, 2022) (listing live and historic shareholder price for

Mike treats his shareholders' votes seriously, he still states that the shares are a "metaphor for trust," and that he has "the right to take the money and run off to Aruba at any time."⁴⁵ Thus, Mike created a simple yet transparent ODR process for a channel that is not live-streamed on YouTube or Twitch, but straightforward, uncomplicated, open to the public to review, and functional over a long time period.⁴⁶

III. THE NEW PARADIGM: A PROPOSAL FOR A CREATOR DISPUTE RESOLUTION SYSTEM

The ODR proposal in this article has never been attempted before, and requires several inferential steps to be found legally and technically feasible. Consequently, the reader should assume these other technical, ethical, legal, and moral limitations have been overcome when reading this proposal.

To begin, this proposal references several appendices found at the end of the article (Appendices I–II). Appendix I depicts the flowchart of a hypothetical claim against a creator via a service provider (i.e., YouTube or Twitch) and how it would be resolved.⁴⁷ Appendix II depicts the architecture of the technical systems required for the ODR creator system to function with the service providers.⁴⁸

A. PLATFORM

Because this service would already be built into YouTube and Twitch, only back-end services and programming are needed, as covered in Appendix II.⁴⁹ Therefore, this article assumes the current method of dispute resolution currently found via both service providers will be the primary method of interacting with this ODR system. There would be very little need to have a separate website for this ODR system because only current users, creators,

Mike Merrill and any historic/upcoming shareholder votes/news on life decisions).

⁴⁵ MIKE MERRILL, *supra* note 8, "Legal/Schmegal."

⁴⁶ It should be noted that Mike Merrill responds to shareholder questions quickly and curates them into reports, to be decided by shareholder-based votes on an as-needed basis or at the annual shareholder conference. *Community Through Capitalism*, *supra* note 44.

⁴⁷ *See infra* Appendix I.

⁴⁸ *See infra* Appendix II.

⁴⁹ *See id.*; Colin Rule & Mark J. Wilson, *Online Resolution and Citizen Empowerment: Tax Appeals and Court Resolutions in North America*, in *DIGITAL TRANSFORMATION AND ITS ROLE IN PROGRESSING THE RELATIONSHIP BETWEEN STATES AND THEIR CITIZENS* 94, 101–05 (2020).

and sponsors of the service provider would be eligible to act as mediators or arbitrators on active disputes because it binds them to the terms found within the agreement in Section III(B) below.⁵⁰ However, there would need to be a share-trading platform for the mandatory sale of shares in creators, when anyone opens an account with the service provider, which will be based on the major cryptocurrency trading platforms: Robinhood, Coinbase, Gemini, BitMart, and Cash App.⁵¹ This blurs the line between the traditional merchant, consumer, and other related parties via a hybrid model as discussed in greater detail below.⁵²

B. THE DISPUTE RESOLUTION AGREEMENT

For a dispute to arise and be covered by the ODR process, the parties must agree to the ODR program.⁵³ This can be achieved easily by altering the TOS for all current members and inserting a new dispute resolution provision for all new members.⁵⁴ Because the TOS for both service providers also include provisions allowing for changes at any time, adding in the dispute resolution changes should have a simple method to distribute it: (1) An email should be sent once a week to all members alerting them of the changes to come at least one month prior to roll-out; (2) once the roll-out day begins at 1:00 AM (PST), any creator logging in for the first time after the new system is implemented must be required to complete a tutorial and acceptance of the new terms; and (3) once they accept

⁵⁰ See *infra* Section III.B.

⁵¹ See ROBINHOOD, <https://robinhood.com/us/en/> (last visited Dec. 10, 2022); COINBASE, https://www.coinbase.com/partner/Investopedia?clickId=QRtQg4WCUxyITbfyXW2VLyrgUkGX0tXpw36uXg0&utm_source=impact&utm_medium=growthp&utm_campaign=rt_p_m_w_d_acq_imp_gro_aff_Dotdash&utm_content=1156380&utm_creative=Promo%20Code%20%2410%20BTC%20Investopedia&irgwc=1 (last visited Dec. 10, 2022); GEMINI, https://www.gemini.com/earn/%7Eclick_id=QRtQg4WCUxyITbfyXW2VLyrgUkGX0tXZw36uXg0&irgwc=1 (last visited Dec. 10, 2022) (Currently, Gemini is mixed up in the FTX collapse and may wind down in the near term.); BITMART, <https://www.bitmart.com/> (last visited Dec. 10, 2022); CASH APP, <https://cash.app/> (last visited Dec. 10, 2022).

⁵² AMY SCHMITZ & COLIN RULE, *THE NEW HANDSHAKE: ONLINE DISPUTE RESOLUTION AND THE FUTURE OF CONSUMER PROTECTION* 50–51 (2017).

⁵³ *Online Dispute Resolution: Workstream Findings & Recommendations*, JUD. COUNCIL OF CAL.: INFO. TECH. ADVISORY COMM. 4 (2021), https://www.courts.ca.gov/documents/ODR_Workstream_Report.pdf.

⁵⁴ See YouTube TOS, *supra* note 14; Twitch TOS, *supra* note 14.

the terms, an email would be sent welcoming them back to the new and improved service-provider creator system.⁵⁵

The new terms-of-service dispute-resolution provision should include details and a link to the new system, including how it would work, with a Q&A section, a flow chart (Appendix I), contact information with a chat option for any questions regarding the new service, and videos demonstrating how to use the service and how it would work based on Appendix I.⁵⁶ The provision itself should also include a provision allowing it to be changed at any time without limitation, securing full acceptance of the new terms once the creator logs in for the first time after the changes, and including the selection process detailed in Appendix I.⁵⁷ Further, the provision should explain how the process would function with the selection of mediators/arbitrators from the creator pool; what kinds of disputes would be covered; how publication and the live-streaming of mediations would work with users being able to input their suggestions and votes when needed; how shareholders would be involved in the process and the ultimate outcome once they vote on decisions the creator should take; how appeals would function; if attorneys may be brought into the dispute; what rights a creator/user/shareholder/sponsor/service provider would have to local courts; and what—if any—attorney's fees and costs may be recovered or awarded via this process.⁵⁸

Additionally, this agreement should include a shareholder provision that requires the streamer to automatically sell ten percent of their initial public offering in their personal creator position to the service provider and require them to float at least another 1,000 shares to the public to purchase, which includes themselves. This would ensure that all creators have shareholders who can act as their advocates within the ODR process if a dispute arises against the streamer in the future. This provision may also be included in the email sent to all creators, users, sponsors, and viewers when they sign in to engage in the process. Furthermore, the service provider may cite to, utilize, and have all shareholders utilize the arbitration process provided by the Financial Industry Regulatory Authority (FINRA) for shareholder disputes only.⁵⁹ This would provide a mechanism with substantial statutory, legal, and arbitration-award precedent that would be upheld throughout the United States if a

⁵⁵ See YouTube TOS, *supra* note 14; Twitch TOS, *supra* note 14.

⁵⁶ See *infra* Appendix I.

⁵⁷ See *id.*

⁵⁸ See *id.*

⁵⁹ See, e.g., Benjamin Davies, *Arbitral Analytics: How Moneyball Based Litigation/Judicial Analytics Can Be Used to Predict Arbitration Claims and Outcomes*, 22 PEPP. DISP. RESOL. L.J. 321, 321–76 (2022).

shareholder dispute were to arise in any way.⁶⁰ Thus, the Appendices cite to this website, but the rest of the materials discussed in this article would fall under the FINRA process of dispute resolution given the specialization the FINRA process presents to investors; this article limits discussion of that topic to a cursory overview.⁶¹

C. COMMENCEMENT OF THE ONLINE DISPUTE RESOLUTION PROCESS

To initiate a dispute via YouTube and Twitch, a complainant (the party(ies) complaining about the creator) may file a complaint via any of several methods: (1) by an individual filing a complaint with a “Report” button found on all live streams and videos on the bottom right corner of the webpage in question; (2) by a trusted viewer or service-provider employee filing a simplified complaint; (3) by an artificial intelligence (AI) moderator found on all live streams automatically filing a complaint when viewer chats contain enough concerning words or phrases (via stylometric analysis) to trigger a tripwire; or (4) by another creator filing a complaint (assuming they are not a mediator, arbitrator, under a complaint themselves, or have over ten ongoing complaints against other creators).⁶² Once the complainant files the complaint, the respondent (the creator) is notified that their ability to post new content is limited until the dispute is resolved.⁶³ The notification also provides the respondent with details of the dispute: (1) who is involved; (2) where in the video/stream the creator allegedly violated the TOS, with a timestamp; (3) the description of the violation as determined by an AI model (the fourth party), viewers in a chat summary, or the complainant’s review; (4) what kind of action the creator could take to automatically revoke the claim and remove the complaint immediately; and (5) a timer depicting how long before the dispute proceeds to the mediation process.⁶⁴ Once

⁶⁰ See *Arbitration Awards Online*, FINRA, <https://www.finra.org/arbitration-mediation/arbitration-awards> (last visited Dec. 10, 2022).

⁶¹ Davies, *supra* note 59, at 355–76.

⁶² SCHMITZ & RULE, *supra* note 52, at 65–66, 85–83, 93. Stylometric analysis is looking for writing patterns within text that can help identify who wrote it, what the intended meaning of the word/phrase might be, and the intended meaning of the sentence. Damien Charlotin, *Who Writes WTO Panel and AB Reports? A Tentative Stylometric Analysis*, MEDIUM (May 1, 2018), <https://medium.com/@damien.charlotin/who-writes-wto-panel-and-ab-reports-a-tentative-stylometric-analysis-565c18f0491d>.

⁶³ See YouTube TOS, *supra* note 14; Twitch TOS, *supra* note 14.

⁶⁴ Leah Wing, Janet Martinez, Ethan Katsh & Colin Rule, *Designing Ethical Online Dispute Resolution Systems: The Rise of the Fourth Party*,

the timer expires and the case is released to the first step of the dispute resolution process—mediation—all the details, chats, requests, and materials related to the dispute are published to the online dispute resolution website for all shareholders, users, and the public to use as they see fit.⁶⁵

D. THE MEDIATION STEP OF THE ODR PROCESS

Once the mediation step of the *stepped* online dispute resolution process (SODR) has commenced,⁶⁶ all the creator's shareholders—including the service provider with their ten-percent ownership—would be notified and have seven business days to review all the materials for the claim.⁶⁷ Thereafter, shareholders would vote on a mediator to mediate the disputes, with the mediator selected by an AI program based on key performance metrics (excluding any input from the service provider).⁶⁸ A plurality vote

37(1) NEGOT. J. 49, 50–63 (Jan. 3, 2021), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/nej.12350>.

⁶⁵ SCHMITZ & RULE, *supra* note 52, at 74–75.

⁶⁶ *Id.* at 36–39.

⁶⁷ Orna Rabinovich-Einy & Ethan Katsh, *Lessons from Online Dispute Resolution for Dispute Resolution Systems Design*, in ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE 1–29 (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3830035 (citing the open, crowd-sourced, and transparent Wikipedia ODR process as an ideal solution for large-scale dispute resolution). Viewers and users subscribed to a creator can also activate notification of disputes when they subscribe to their channels, but viewers must opt in to receive this notification because most people would not be interested in the process. *Id.*

⁶⁸ See *infra* Section IV.A–C; Amy Schmitz & John Zeleznikow, *Intelligent Legal Tech to Empower Self-Represented Litigants*, 23 COLUM. SCI. & TECH. L. REV. 142, 144–83 (2021). Mediators would be selected by the AI program to limit human bias, allow for further background checks than human beings have access to, and make the selection process more efficient. It is assumed that creators who specialize in only mediating disputes will spring up where demand for their services on these platforms exponentially increases after this SODR process is adopted, and will likely have a central clearing house of pre-approved mediators maintained by the community. This is a similar approach to what the International Centre for Settlement of Investment Disputes (ICSID) maintains with its database of conciliators and arbitrators, but with the community here. See *About ICSID: Database of ICSID Panels*, ICSID, <http://icsiddev.prod.acquia-sites.com/about/arbitrators-conciliators/database-of-icsid-panels> (last visited Dec. 14, 2022) (listing, by ICSID member country, the provided arbitrators and conciliators for dispute resolution of ICSID treaty disputes). Thus, it does not make sense to hire many initial mediators given the demand for mediator services once the system grows. These mediators can be paid in cryptocurrency jointly by the service provider

would be enough to select a mediator and voting would remain open for three business days for all shareholders.⁶⁹ Thereafter, the mediator would have thirty business days to mediate the dispute, and assuming the claimant accepts one or more of the mediator's proposals, this thirty-day period would include a shareholders' agreement by plurality vote as to which solution is optimal.⁷⁰ One should note that the mediator must hold at least two live-streamed sessions, five hours long each, and at different times during the day to: (1) accommodate shareholders from different time zones around the planet; (2) ensure shareholders have a chance to interact and suggest their opinions; and (3) allow shareholders to hear/read other options proposed during these streams.⁷¹ This would prevent any one country, time zone, or party from monopolizing the process while simultaneously increasing the diversity of suggestions. To ensure the creator's best interest remains at heart, the service provider, mediator, and creator would be allowed to veto any

and the creator's regular shareholders. This process would require its own article to properly describe and build out, so it is assumed for this article that the payment will be self-sustaining for the creators, shareholders, and service providers. Additionally, all mediators cannot own shares or have an ownership interest in either the claimant or the respondent, so an AI program would check for this potential conflict of interest before proposing the mediator. If a mediator does purchase a shareholder position in either the claimant or respondent during the mediation, then the mediator would be immediately excused, and the mediation process would begin again. This is done to prevent any double hatting from occurring, or any other kind of conflict of interest. *See* Malcolm Langford, Daniel Behn & Runar Hilleren Lie, *The Revolving Door in International Investment Arbitration*, 20(2) J. INT'L ECON. L. 301, 309–14, 321 (2017) (finding complex network of arbitrators—some of whom were acting as counsel in one case and as arbitrator in another, in a practice known as “double hatting”—could be influenced by their social network when writing briefs or drafting awards).

⁶⁹ To keep costs down, there would only be one mediator, but the shareholders, service provider, or creator would be able to request a panel of three or more mediators for complex disputes if they have shareholder majority approval to do so.

⁷⁰ The mediator could use evaluation, facilitation, negotiation, crowd chat-based proposals, or another method to reach a solution. Wing, Martinez, Katsh & Rule, *supra* note 64, at 50–62 (noting decentralized justice as a method of resolving disputes via the crowd). Once solutions are reached, the mediator would enter them into a voting mechanism that shareholders of the creator—except for the service provider—would then vote on.

⁷¹ This provides for a “squeaky wheel” system to prevail, where shareholders who complain the most receive more attention. In most instances, this is a weakness, but with ODR's design similar to this proposal, it can be helpful in instigating more discussion and ideas about a creator's dispute. SCHMITZ & RULE, *supra* note 52, at 22–39, 83–106.

shareholder-approved solution individually, and thereafter, the creator (respondent) would be able to select from the mediator's solutions to override any shareholder-approved solution. But, respondent risks having their viewers, shareholders, or the service provider intervene.⁷² Thus, they would need to select a settlement option that makes economic, legal, and social sense, given how the wrong solution would subject their channel to a web of oversight. The parties would implement the accepted settlement solution with viewer oversight, and the final product would be reviewed by the mediator for compliance purposes. Thereafter, the service provider would declare the dispute closed and publish the result of the dispute resolution process—including the mediator's input of the award—on their ODR webpage and the creator's share-trading page as a public announcement.

E. APPEALS & ESCALATION OF THE SODR PROCESS

If parties do not reach a solution, either because another claim is made; the claimant is not satisfied with the mediator's proposals; the service provider or respondent vetoes all solutions; or another scenario not contemplated here occurs, then the shareholders, claimant, or respondent—at any time during the mediation—would be able to either call a vote or force an appeal to the administrative branch of the service provider for arbitration of the dispute. Thereafter, the same policies and procedures currently in place at YouTube and Twitch would be used to find a solution to the problem with a written arbitration award being made at its conclusion. This would occur within one week of the arbitration process being selected and would have limited interaction from any outside party other than for advocacy by the shareholders, the respondent, and the claimant. Nevertheless, this appeal to an arbitration board would have several differences to the currently confidential and mysterious process described in Sections I and II above.⁷³

First, the entire arbitration process—including all evidence and hearings made by the service provider's arbitrator—would be public and live-streamed until the vote concludes. Second, the service provider would select the arbitrator from a list voted on by

⁷² A bad decision—such as leaving the video up without removal of the disputed materials—may cause the service provider to become involved while overriding the shareholder-approved solution, which may in turn cause the creator's share price to plummet. Thus, market forces would keep solutions and the end result in check if creators want to balance the competing interests of the shareholders, viewers, service provider, and claimant.

⁷³ See discussion *supra* Sections I, II.

all shareholders currently holding one or more shares with any publicly traded creator on the service provider's trading website.⁷⁴ Because the arbitrator is majority-approved, each share owned would count as one vote for or against the proposed arbitrator. Third, decisions by the service provider would be absolute but appealable by a majority vote of the creator's shareholders to a panel of three arbitrators where the same rules in Sections III(D) and (E) would apply.⁷⁵ Fourth, once the panel reaches an award after hearing from all parties and the shareholders, the panel would issue a binding and final arbitration award that the service provider would implement. This would ensure a speedy resolution with an enforceable award that would resolve the dispute without any further issue.⁷⁶ Fifth, the panel's award would be final and non-appealable, outside of extreme circumstances such as bribery, murder, and so on.

F. CREATOR'S SHAREHOLDER OUTCOMES & SOLUTIONS

The key to this SODR process is the shareholders. Because crowdfunding is so successful, why not use the power of up to billions of people to find creative solutions that would not only safeguard their investment in creator shares, but reward them with higher share prices when creators act in everyone's best interest?⁷⁷

⁷⁴ This vote could happen every quarter and would be done by majority vote for each arbitrator, who would remain on the panel for one year until all shareholders vote on them again. Shareholders would be able to view the arbitrator's past decisions, AI-based analytics of those arbitrators, and any other information they consider material when casting their respective votes.

⁷⁵ See discussion *supra* Sections III(D), (E); *infra* Appendices I, II.

⁷⁶ The appeal process would be far more service-provider-centralized, but given the shareholder status of the service provider in *all* creators, this would prevent any extreme or harsh punishments against the creator because of this shareholder overlap. However, it should be noted that any dispute with a creator would hit their share price and likely that of the claimant, which would encourage both the claimant and respondent to find a solution because a frivolous claim could result in the claimant being banned, or alternatively a valid claim could damage the claimant's share price stemming from the limited ad placement. For additional perspective, see Temitayo Bello, *Entertainment Industry Disputes; Arbitration as a Catalyst to Perennial Malady*, SSRN (Oct. 19, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3055732 (discussing advantages arbitration offers in general entertainment industry, which includes streaming).

⁷⁷ This theory, called the "perfect market theory" (i.e., the Efficient Market Hypothesis), is suggested and used in markets. SCHMITZ & RULE, *supra* note 52, at 7–9; see Lucas Downey, *Efficient Market Hypothesis (EMH)*:

It is a hybrid solution of existing technology with a twist: a trading platform for shares or cryptocurrencies enforced via the service provider's TOS that include features similar to Kleros and Crowd Jury, where shareholder voting for resolutions, mediators, arbitrators, and all other decisions are incentivized with crypto payments or awarding more shares to the shareholders who backed the winning majority vote decision.⁷⁸

Because everyone with a financial investment at stake would have a voice in this process, they would all stand to gain from a quick and inventive solution before the next step in the SODR, and may maintain or increase the share price in their own investment whether it be as a service provider, claimant, or respondent.

Some creative solutions include: (1) having the respondent remove copyrighted material from videos (as Twitch does); (2) having the claimant purchase a respondent creator's shares at a discounted price in exchange for using their copyrighted materials; (3) using shareholder crowdfunding to pay for a respondent's settlement or lost revenue from bans; (4) prompting a respondent or claimant to drop a suit due to a drastic drop in the creator's share price; (5) allowing greater AI oversight to prevent further disputes; and (6) raising both parties' reputation by having a creator appear on a claimant's stream.⁷⁹

The possibilities are endless, and the whole point of this elaborate ODR process is to reduce the already overwhelming burden on service providers while building out a standardized SODR process that can be integrated with any streaming or video service. It would also use crowdsourcing to inexpensively locate, discuss, and resolve disputes, similar to current systems utilized without much fanfare, transparency, or oversight from the service

Definition and Critique, INVESTOPEDIA, <https://www.investopedia.com/terms/e/efficientmarkethypothesis.asp> (Apr. 24, 2023).

⁷⁸ *About Kleros*, KLEROS, <https://forum.kleros.io/tos> (last visited Dec. 10 2022); Federico Ast & Alejandro Sewrjuin, *The Crowdjury, a Crowdsourced Judicial System for the Collaboration Era*, MEDIUM, <https://medium.com/the-crowdjury/the-crowdjury-a-crowdsourced-court-system-for-the-collaboration-era-66da002750d8> (Nov. 10, 2015); YouTube TOS, *supra* note 14; Twitch TOS, *supra* note 14; *see* discussion *supra* Section III.B. For example, shareholders may have a majority vote of 51% for an arbitrator where a small amount of cryptocurrency or shares are awarded for each shareholder who voted to approve that arbitrator while the minority shareholders would receive no reward.

⁷⁹ *See How to Appeal Muted Audio*, TWITCH, https://help.twitch.tv/s/article/how-to-appeal-flagged-content?language=en_US#:~:text=Twitter%20services%20scan%20VOD%20as,that%20portion%20of%20the%20VOD (last visited Dec. 10, 2022).

provider.⁸⁰ This would allow service providers to facilitate optimal outcomes that could adapt to changing public ideals without disrupting the creator or viewers' consumption.

G. POTENTIAL ISSUES

As a paradigm shift that has never been attempted before, there would likely be bugs, problems, demonstrations, public-relations difficulties, financial complications, and political issues surrounding SODR.⁸¹ However, all these concerns could be addressed if service providers demonstrated how powerful a crowd can be when put in charge. By empowering a crowd while also creating a method of shareholder participation in a transparent fashion, service providers can circumvent substantial amounts of regulation of free speech and what is considered protected because enabling a crowd to select the solution would be akin to conducting a public poll.⁸² Also, with renewing political deadlock in the U.S. Congress, this spells an opportunity for service providers to innovate in what was normally a legislative area: free speech and copyright protection.⁸³

IV. KEY PERFORMANCE INDEXES (KPIs) FOR VTUBE/STREAMER DISPUTE RESOLUTION SUCCESS

Key performance indexes (KPIs) are essential to the SODR approach, and SODR must be fully implemented before KPIs can be developed and understood. Additionally, satisfaction of users (i.e., viewers, claimants, respondents, and mediators) must be constantly surveyed to improve the SODR process by making it less restrictive and more like the eBay model.⁸⁴ Therefore, the SODR process must evolve over time to become more reliable, flexible, and efficient

⁸⁰ SCHMITZ & RULE, *supra* note 52, at 65–66, 85–83 & 93.

⁸¹ *Online Dispute Resolution*, RESOL. SYS. INST., <https://www.aboutrsi.org/special-topics/online-dispute-resolution> (last visited Mar. 11, 2023).

⁸² SCHMITZ & RULE, *supra* note 52, at 76.

⁸³ See Dan De Luce, Courtney Kube, Liz Brown-Kaiser & Scott Wong, *Speaker Deadlock Puts House in "Gray Zone" on National Security Issues*, NBC NEWS (Jan. 5, 2023, 2:56 PM PST) <https://www.nbcnews.com/politics/congress/speaker-deadlock-puts-house-gray-zone-national-security-issues-rcna64531>.

⁸⁴ Colin Rule, Vikki Rogers & Louis Del Duca, *Designing a Global Consumer Online Dispute Resolution (ODR) System for Cross-Border Small Value-High Volume Claims—OAS Developments*, 42 UNIF. COM. CODE L.J. 221, 239–40 (2009); see Colin Rule & Chittu Nagarajan, *Leveraging the Wisdom of Crowds: The eBay Community Court and the Future of Online Dispute Resolution*, AC RESOL. 4–7 (Winter 2010).

based on user feedback and public review of the process.⁸⁵ This section addresses several bedrock KPIs to be utilized for any and all disputes involving service providers.

A. MEDIATOR KPIs

Perhaps the largest, overriding KPI for mediators is conflict of interest.⁸⁶ Because mediators cannot be current or former shareholders of either the claimant or respondent, using AI to verify the background and share-trading platform for conflicts of interest is paramount.⁸⁷ In addition to an AI check, shareholders should

⁸⁵ SCHMITZ & RULE, *supra* note 52, at 79.

⁸⁶ See Jo DeMars, Susan Nauss Exon, Kimberlee K. Kovach & Colin Rule, *Virtual Virtues: Ethical Considerations for an Online Dispute Resolution (ODR) Practice*, DISP. RESOL. MAG. 8 (Fall 2010), <https://colinrule.com/writing/virtualvirtues.pdf> (discussing potential conflicts of interest).

⁸⁷ Thomas Vacek, Ronald Teo, Dezhao Song, Conner Cowling, Frank Schilder & Timothy Nugent, *Litigation Analytics: Case Outcomes Extracted from US Federal Court Dockets*, PROC. NAT. LEGAL LANGUAGE PROCESSING WORKSHOP 2019 45, 47–50 (2019) [hereinafter Vacek Case Outcome] (SVM AI application to PACER data to find useful litigation analytics in court data); Stacia L. Haynie, *A Time Series Analysis of the Functional Performance of the United States Supreme Court* 74–272 (Aug. 1990) (PhD dissertation, University of North Texas) (on file with UNT Digital Libraries) (discussing several time series models and the extraction of useful data on Supreme Court justices); see Thomas Vacek, Dezhao Song, Hugo Molina-Salgado & Ronald Teo, *Litigation Analytics: Extracting and Querying Motions and Orders from US Federal Courts*, PROCS. NORTH AM. CHAPTER ASS'N COMPUTATIONAL LINGUISTICS-HUM. LANGUAGE TECHS. 2019: DEMONSTRATIONS 116, 118–20 (2019) [hereinafter Vacek Motions and Orders] (using SVM/NLP/various machine learning models to filter and extract useful analytics from federal court data); Pontus Stenetorp, Sampo Pyysalo, Goran Topic, Tomoko Ohta, Sophia Ananiadou & Jun'ichi Tsujii, *BRAT: A Web-Based Tool for NLP-Assisted Text Annotation*, 13TH CONF. ASS'N COMPUTATIONAL LINGUISTICS 102, 102–06 (2012) (applying NLP/BRAT/STAV to find useful information within texts and other online documents); Priya Dwivedi, *NLP: Extracting the Main Topics from Your Dataset Using LDA in Minutes*, TOWARDS DATA SCI. (Aug. 22, 2018), <https://towardsdatascience.com/nlp-extracting-the-main-topics-from-your-dataset-using-lda-in-minutes-21486f5aa925> (discussing NLP and Latent Dirichlet Allocation (LDA) as it applies to text and other data sources for useful links); Chad M. Oldfather, Joseph P. Bockhorst & Brian P. Dimmer, *Triangulating Judicial Responsiveness: Automated Content Analysis, Judicial Opinions, and the Methodology of Legal Scholarships*, 64 FLA. L. REV. 1189, 1240 (2012) (discussing SVM and multiple regression modeling (MRM) to determine judicial speed, opinion writing, and the standards judicial writing entail); S.T.L.A. Mulders, *Which Type*

have the opportunity to check for any conflicts of interest during the voting process because AI programs are imperfect and the human factor can help avoid these issues.⁸⁸ Additionally, mediators should have the following KPIs published for shareholders to review: (1) the average number of days before a settlement is reached; (2) the percentage of cases resolved compared to the percentage appealed or sent to service-provider arbitration; (3) the number of words typed in a settlement; (4) the stylometric analysis of those words; (5) the number of past cases overseen; (6) the number of active cases (which cannot be higher than ten at one time); (7) the number of cases filed against the mediator (past or present); and (8) any litigation/arbitral analytics publicly available from courts throughout the United States where they have acted as a party, counsel, or arbitrator.⁸⁹

B. CLAIMANT & RESPONDENT KPIs

Turning to the claimant and respondent, their KPIs should also cover any scenarios where they acted as a mediator, including any prior cases where they had a claim against another creator.⁹⁰ This would help in determining if a claim is real, relevant, substantiated, and worth reviewing via SODR. However, an issue with these metrics is that they are unknown and untested.⁹¹ No one knows what does and does not work for these KPIs.⁹² Thus, the best

of Lawyer Wins Most Cases? A Quantitative Study of Dutch Court Cases, TILBURG UNIV. 5, 23–37 (2016) (using crawler software to analyze Dutch civil law cases for litigation analytics to better explain why parties and courts decide in a certain manner such as gender, names, attorney experience, and other analytics).

⁸⁸ Schmitz & Zeleznikow, *supra* note 68, at 144–83 (exemplifying similar system where parties have chance to negotiate via AI and review before accepting); *see* discussion *supra* Section III.D; *supra* notes 70–73.

⁸⁹ Vacek Case Outcome, *supra* note 87, at 47–50; Haynie, *supra* note 87, at 74–270; Vacek Motions and Orders, *supra* note 87, at 117–20; Stenertorp, Pyysalo, Topic, Ohta, Ananiadou & Tsujii, *supra* note 87, at 103–06; Dwivedi, *supra* note 87; Oldfather, Bockhorst & Dimmer, *supra* note 87, at 1240–42; Mulders, *supra* note 87, at 23–37; Charlotin, *supra* note 62; RYAN WHALEN, COMPUTATIONAL LEGAL STUDIES: THE PROMISE AND CHALLENGE OF DATA-DRIVEN RESEARCH 57–60 (2020).

⁹⁰ Rule, Rogers & Del Duca, *supra* note 84, at 239–44 (listing merchant and vendor analytics that may be helpful in creating KPIs for this proposal).

⁹¹ *See* Alyson Carrel & Noam Ebner, *Mind the Gap: Bringing Technology to the Mediation Table*, 2019 J. DISP. RESOL. 1, 2–41 (2019).

⁹² Richard Moorhead, *ODR: More on Key Performance Indicators for Access to Justice* (June 14, 2018), <https://law-tech-a2j.org/odr/odr-key-performance-indicators-on-access-to-justice-an-academic-hedges/> (noting

way forward here is to utilize AI and crowd-based analysis to discover patterns that could be used for KPIs, which can then be programmed into a working model for handling future disputes.⁹³

C. ARBITRATOR KPIs

Arbitrators would follow the same analytics as mediators, with additional areas due to the finality and limited appealability of arbitration.⁹⁴ Also, analytics would be needed pertaining to different motions arbitrators have ruled on (granted, denied, and partials) in the past. Applicable areas to provide analytics on include: (1) motions to strike; (2) motions for summary judgment; (3) partial awards; (4) the percentage of gender win rates (how often a person of a gender (any gender based upon M/F/LGBTQ) wins a case based upon their gender); (5) any correlations with their decisions to sports-team wins or losses; (6) political backgrounds; (7) in-depth stylometric analysis with a review of their past billing practices for discrepancies; (8) social media posts; (9) any litigation they represented parties in (including administrative hearings); and (10) any other relevant information (such as bankruptcies in the arbitrator's past).⁹⁵

there are various methods in development to monitor user experience and satisfaction, as well as quality of procedures).

⁹³ I estimate there will need to be at least six months of training data for any meaningful KPIs and analytics to be determined in this area. See Masha Medvedeva, Michael Vols & Martin Wieling, *Judicial Decisions of the European Court of Human Rights: Looking into the Crystal Ball*, PROC. CONF. ON EMPIRICAL LEGAL STUDS. EUR. 1, 5–7 (2018).

⁹⁴ See *Positive Software Solutions, Inc. v. New Century Mortgage Corp.*, 476 F.3d 278, 279 (5th Cir. 2007); *Birtz v. Alfa-Laval Food & Dairy Co.*, 34 Cal. App. 4th 1085, 1090–1108 (5th Cir. 1995); *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612, 1619–31 (2018); *Commonwealth Coatings Corp. v. Continental Cas. Co.*, 293 S. Ct. 145, 149 (1969); discussion *supra* Section IV.A.

⁹⁵ See Daniel L. Chen, *Judicial Analytics and the Great Transformation of American Law*, 27 A.I. L. 15, 17–40 (2018); Oleg Metsker, Egor Trofimov, Max Petrov & Nikolay Butakov, *Russian Court Decisions Data Analysis Using Distributed Computing and Machine Learning to Improve Lawmaking and Law Enforcement*, 156 PROCEDIA COMPUT. SCI. 264, 264–73 (2019) (current Russian machine learning analysis of court cases); Кирилл Соснин, *Предиктивная судебная аналитика: возможно ли знать решение судьи до его вынесения*, VC.RU (Feb. 3, 2020), <https://vc.ru/legal/104833-prediktivnaya-sudebnaya-analitika-vozmozhno-li-znat-reshenie-sudi-do-ego-vyneseniya> (last visited Dec. 2, 2020) (discussing Russian forensic analytics (another term for judicial analytics) as a way to predict litigation outcomes before a case is filed); Flora P. Kalalo & Kathleen C. Pontoh, *The Use of Artificial Intelligence (AI) in Legal Framework for International Arbitration Practices in*

D. ETHICAL CONSIDERATIONS FOR SODR

Ethics is the second most important component of the SODR process for service providers, as it creates trust, transparency, and belief in the process as being fair and impartial.⁹⁶ In fact, if trust is not built between the service providers and creators, this would threaten the stability, profitability, and web traffic to both YouTube and Twitch; thus, if it is desirable to have a functioning and prosperous streaming/video service, creators must know their interests and trust are being safeguarded.⁹⁷

Service providers are incentivized to prevent third parties from tilting the mediation, arbitration, and SODR process in favor of one group at the expense of its stability.⁹⁸ This is best illustrated

Indonesia, 472 ADVANCES SOC. SCI., EDUC. & HUMANITIES RSCH. 6, 6–10 (2020) (discussing use of AI in arbitration cases held in Indonesian or involving Indonesian arbitration claims by applying AI to find insights via analytics); Jena McGill & Amy Salyzyn, *Judging by Numbers: How Will Judicial Analytics Impact the Justice System and Its Stakeholders?*, 44 DALHOUSIE L.J. 249, 7–26 (2021) (discussing use of judicial analytics in Canadian court systems); M.A. Islam & M. Jahidul Haque, *Evaluating Document Analysis with kNN Based Approaches in Judicial Offices of Bangladesh*, 2018 2D INT’L CONF. ON COMPUTING METHODOLOGIES & COMMC’N, 646, 646–50 (2018) (discussing brief overview of k-nearest neighbors (kNN) applications in Bangladeshi courts as a mathematical way to discover litigation analytics); Nikolaos Aletras, Dimitrios Tsarapatsanis, Daniel Preotiuc-Pietro & Vasileios Lampos, *Predicting Judicial Decisions of the European Court of Human Rights: A Natural Language Processing Perspective*, 2 PEERJ COMPUT. SCI. 1, 1–19 (2016) (applying bag of words (BOW), which takes sentences down to a word level to find useful links and analytics based upon classifying those words).

⁹⁶ SCHMITZ & RULE, *supra* note 52, at 65–66, 85–83, 93; DeMars, Naus Exon, Kovach & Rule, *supra* note 86, at 8–10.

⁹⁷ SCHMITZ & RULE, *supra* note 52, at 33–83. Creators invest mammoth amounts of time, money, and resources building followings in the millions on YouTube, Twitch, Instagram, TikTok, Twitter, and other platforms. *See id.* This makes them wary—just like an investor—about putting all their proverbial eggs in one basket. *See id.*

⁹⁸ The use of well-established standards, as a starting point, is a great idea. *See, e.g., Comprehensive Arbitration Rules and Procedures*, JAMS (June 1, 2021), <https://www.jamsadr.com/rules-comprehensive-arbitration/>; *Commercial Arbitration Rules and Mediation Procedures*, AAA (2013), <https://www.adr.org/sites/default/files/Commercial%20Rules.pdf>; *The Code of Ethics for Arbitrators in Commercial Disputes*, AAA, Canons I–X (Mar. 1, 2004), https://www.adr.org/sites/default/files/document_repository/Commercial_Code_of_Ethics_for_Arbitrators_2010_10_14.pdf. However, they will

by the case of *Hooters of America, Inc. v. Phillips*.⁹⁹ In *Hooters*, corporate policy provided employees with the option of arbitrating, but without any due process.¹⁰⁰ Examples include: (1) the signing of an unread arbitration agreement; (2) advancing notice of possible future claims; (3) filing of optional responsive pleadings for *Hooters*; (4) prohibiting claim amendments; (5) prohibiting employee recordation of hearings; (6) enjoining employees from filing motions for summary judgment; (7) and granting *Hooters* discretion to select arbitrators.¹⁰¹ This demonstrates a direct and fatal threat to the stability of both arbitration and the SODR process. As a result, the shareholder and creator share-trading platform would help regulate these items and prevent any major breaches of trust because all relevant materials would be public, published, transparent, and designed to have critiques and voting as an essential part of the process.

Another concern is the use of lit-jud-arb analytics on mediators, arbitrators, and creators throughout the SODR process.¹⁰² This is a dangerous space because collecting analytics on people with privacy protections could easily violate those rules, and this domain is virtually unregulated in the United States.¹⁰³ Based on this premise, any analytics collected on potential mediators and arbitrators prior to a shareholder vote should be disclosed and provided to the mediator(s) or arbitrator(s) whose data were collected. This would provide a way to confirm that the analytics are verified, undisputed, and in compliance with privacy

need to be adjusted or rewritten for the SODR process described in this article.

⁹⁹ 173 F.3d 933 (4th Cir. 1999) (discussing how the *Hooters*-maintained arbitration standards were unconscionable and void for public policy reasons); *see also* Commonwealth Coatings Corp. v. Cont'l Cas. Co., 393 U.S. 145, 148–50 (1968); Murray v. UFCW Int'l, Local 400, 289 F.3d 297, 304–05 (4th Cir. 2002); Penn v. Ryan's Fam. Steak Houses, 269 F.3d 753, 757 (7th Cir. 2001); Gullett v. Kindred Nursing Ctrs. W., LLC, 390 P.3d 378, 384–85 (Ariz. Ct. App. 2017).

¹⁰⁰ *Hooters*, 173 F.3d at 939.

¹⁰¹ *Id.* at 935–40.

¹⁰² Davies, *supra* note 59, at 321–74. Lit-jud-arb analytics can be described as statistical numbers, based upon data gleaned from court, arbitration, or judicial writings, which can be used to help a party to win a case if they use this data to their advantage. *Id.*

¹⁰³ Davies, *supra* note 59, at 321–74; Jeffery Commission & Giulia Previti, *The Increasing Use of Data Analytics in International Arbitration*, N.Y. L.J. (Nov. 20, 2020, 2:30 PM), <https://www.law.com/newyorklawjournal/2020/11/20/the-increasing-use-of-data-analytics-in-international-arbitration/?slreturn=20210009011321>.

and other laws.¹⁰⁴ This would also provide fertile ground for the advancement of analytics and open dialogue between attorneys, viewers, shareholders, creators, mediators, and arbitrators on acceptable practices for analytics in the twenty-first century.

V. THE FUTURE OF DISPUTE RESOLUTION WITH VTUBERS & STREAMERS

The future of ODR with service providers is currently uncertain, unregulated, and untested, but if YouTube, Twitch, or another provider offers the resources, time, and commitment, ODR can blossom into a self-sustaining and immeasurably profitable advancement compared to the enigmatic and opaque methods utilized today. This future is so unknown because the amount of money and further artistic expression online platforms such as YouTube or Twitch can foster when they are no longer hindered and restrained by archaic methods of ODR is, as of yet, unfathomable.¹⁰⁵

¹⁰⁴ Davies, *supra* note 59, at 321–76; Catherine Rogers, *Arbitrator Intelligence: From Intuition to Data in Arbitrator Appointments*, 11 N.Y. DISP. RESOL. L. 1, 44 (2018). Therefore, establishing ethics rules from another well-developed area of research, such as medical, would be essential to the integrity of the entire system. NAT'L HEALTH AND MED. RSCH. COUNCIL NATIONAL STATEMENT ON ETHICAL CONDUCT IN HUMAN RESEARCH 9–99 (2018), <https://www.nhmrc.gov.au/about-us/publications/national-statement-ethical-conduct-human-research-2007-updated-2018#block-views-block-file-attachments-content-block-1>; AUSTL. GOV'T, DEP'T OF INDUS., SCI., ENERGY & RES., *AI Ethics Principles*, <https://www.industry.gov.au/data-and-publications/building-australias-artificial-intelligence-capability/ai-ethics-framework/ai-ethics-principles> (last visited Dec. 6, 2022). Litigation analytics are regulated in France, where it is illegal to publish analytics on individual judges but general analytics on courthouses is acceptable. See Grégoire Triet & Gide Loyrette Nouel, *Legal Tech, in View of the French Judicial “Analytics Ban.”* FICPI 18th F. 1, 1–16 (Oct. 11, 2019), https://ficpi.org/_uploads/files/IP_PM_Session_7.3_-_Triet_.pdf; Loi 2019–222 du 23 mars 2019 de programmation 2018–2022 et de réforme pour la justice [Law 2019–222 of March 23, 2019 on the programming and reform for justice], LÉGIFRANCE: JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Mar. 24, 2019, p. 15–16, https://www.legifrance.gouv.fr/eli/loi/2019/3/23/JUST1806695L/jo/article_33.

¹⁰⁵ As the possibilities suggested by this statement are pursued, the trajectory of ODR development may be in a direction not really anticipated today, one that takes more seriously the role that information can play not only in how disputes are resolved but in how they can be prevented. ETHAN KATSH, ODR: A LOOK AT HISTORY 32 (2020); Rule & Nagarajan, *supra* note 84, at 4–7; Colin Rule, *Technology and the Future of Dispute*

The *stepped* online dispute resolution process outlined in this article is an interesting place to begin designing an SODR system, but there are many technical, legal, ethical, and societal challenges that will manifest during its implementation.¹⁰⁶ Nevertheless, this field holds substantial promise to not only free resources up for service providers and creators alike, but to streamline services, content creation, and the Internet with less regulation and political interference, and fewer innovation-stifling barriers, while encouraging greater creativity and the expression of ideas.

Finally, SODR will evolve again with the advent of virtual reality, augmented reality (for more detailed and contextualized face-to-face interaction),¹⁰⁷ and the use of biometrics in measuring people's honesty.¹⁰⁸ These areas are currently in their infancy and lack any kind of ODR built into their related software or programs, nor do they have a functioning network with millions of users. Thus, only time will tell what these changes may bring.

VI. CONCLUSION

SODR demonstrates a tangible and possible way to resolve the ongoing problems plaguing modern service providers such as YouTube and Twitch, where current methods of dispute resolution fail to provide a reasonable and transparent process for why a platform—only providing a simple explanation—removes, edits, or outright bans a video, stream, or creator. This article provides a framework and diagrams as a suggestion for service providers to follow and implement to reduce costs, increase efficiency, and produce a comprehensible modern and transparent process any individual can follow when they decide to become a creator or shareholder in these online communities. Nevertheless, this article

Resolution, 21 DISP. RESOL. MAG. 5–6 (Winter 2015). Thus, a paradigm shift in how we approach problems and disputes needs to occur in order for society to change for the better moving forward.

¹⁰⁶ See generally Chen, *supra* note 95.

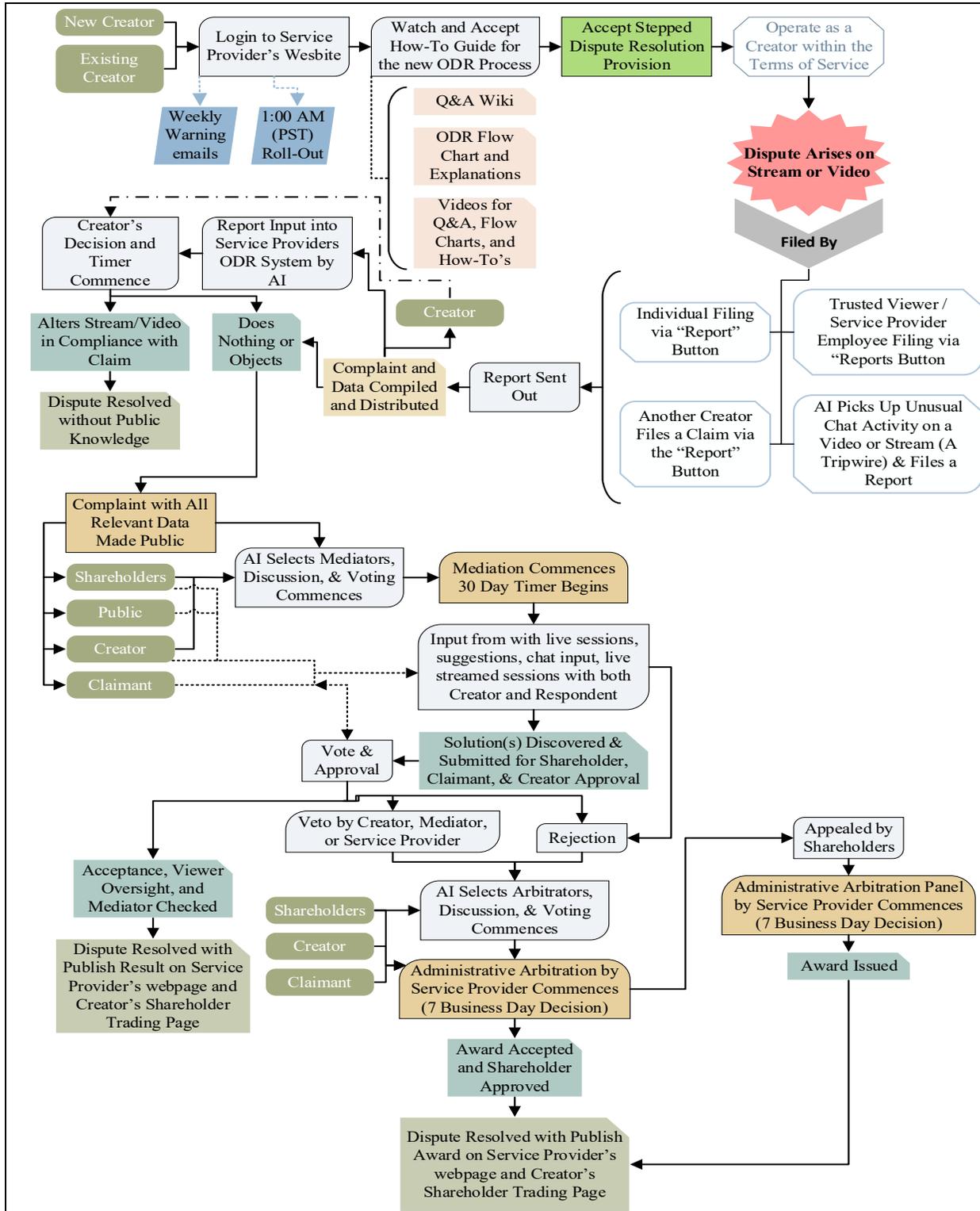
¹⁰⁷ SCHMITZ & RULE, *supra* note 52, at 71.

¹⁰⁸ Andre Aubert, Bert Seps & Frank Beckers, *Heart Rate Variability in Athletes*, 33 SPORTS MED. 889, 889–919 (2003); Ryszard S. Gomolka, Stefan Kampusch, Eugenijus Kaniusas, Florian Thurk, Jozef Szeles & Wlodzimierz Klonowski, *Higuchi Fractal Dimension of Heart Rate Variability During Percutaneous Auricular Vagus Nerve Stimulation in Healthy and Diabetic Subjects*, 9 FRONTIERS IN PHYSIOLOGY 1162, 1162–69 (Aug. 12, 2018); Л.А. Бокерия, О.Л. Бокерия & И.В. Волковская, *Вариабельность сердечного ритма: методы измерения, интерпретация, клиническое использование*, 4 Анналы Аритмологии 21–32 (2009); Teledyne FLIR, *FLIR Thermography in Sports Medicine*, YOUTUBE (Feb. 22, 2016), <https://www.youtube.com/watch?v=NpK2RPCEyVQ>.

leaves many areas underdeveloped or unaddressed, including numerous legal and ethical considerations inherent to such a transformation. Thus, service providers should temper any serious consideration of this article with a healthy dose of pragmatism before utilizing its recommendations on their respective platforms.

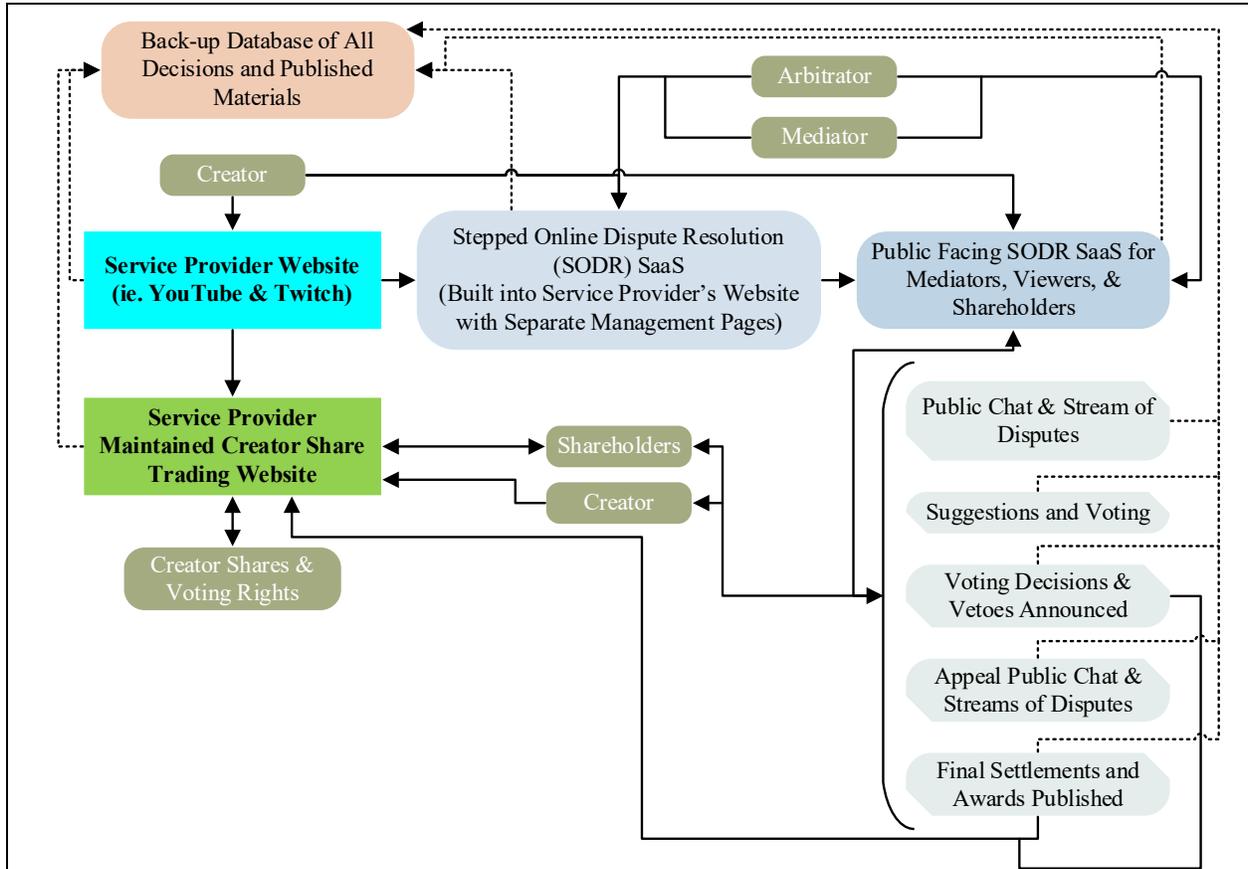
Appendix I

The following chart depicts the theoretical flow of a new dispute or claim against a creator via the Stepped Online Dispute Resolution (SODR) process described in this article:



Appendix II

The following chart depicts the required websites and high-level website or server requirements for the proposed SODR process to function for service providers such as YouTube and Twitch¹⁰⁹:



¹⁰⁹ The required changes are simple and easy to implement to increase interoperability and deployment while reducing the number of failure points and bugs.