

# Understanding Dispute Resolution Options in Technology Agreements

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## Dispute Resolution Options

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- Litigation
- Quasi-judicial proceedings
  - Administrative agencies
- Alternative dispute resolution (ADR)
  - Types of disputes: almost any type
    - Intellectual property
    - Employment
    - Supplier/customer
    - Many, many others



## Alternative Dispute Resolution

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- Two main types
  - Mediation – information, and possible resolution
    - Parties submit confidential statements and other information to a mediator
    - Parties meet for mediation session, but usually spend most of the session in separate rooms
      - Shuttle diplomacy by the mediator
    - Mediator may continue discussions with parties after the mediation session is completed to try to reach a settlement
  - Arbitration – resolution
    - Format is varied, but more akin to litigation – discovery, testifying fact and expert witnesses
    - Arbitrator makes binding findings

## Alternative Dispute Resolution

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- Many blended types of ADR that involve mediation as a first step, and then arbitration as a second step:
  - Combined mediation/arbitration
  - Baseball – both parties submit offers, mediator chooses one
  - Golf – mediator decides settlement terms, parties submit proposed settlement terms, and closest terms to mediator's terms are binding

## Advantages of ADR

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- **Confidential \*\*\***
- May be quicker than litigation
- May be cheaper than litigation
- More flexible rules
- May be last chance to avoid large litigation fees

## Disadvantages of ADR

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- Cost
  - Unlike a judge, must pay arbitrators/mediators
  - Parties usually pay  $\frac{1}{2}$  each
  - May also have to pay separate administrative costs – travel, meals, venue, etc.
  - Can agree that losing party pay all fees/expenses
- Best suited to disputes where damages are an adequate remedy

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First appeared as part of the conference materials for the  
29<sup>th</sup> Annual Technology Law Conference session

"Understanding Dispute Resolution Options in Technology Agreements"