

Understanding Dispute Resolution Options in Technology Agreements

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Dispute Resolution Options

- 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

- 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

- 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

- **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

- 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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