



## **Alternative Dispute Resolution Offers a Different, Less Expensive Path Than Litigation**

*By John C. Yates , Special To LTW*

**Editor's note: John C. Yates Chairs the Technology Group of the law firm Morris, Manning & Martin, LLP. This is the second in a series on dispute resolution, litigation and the technology company. In last week's column, he focused on the litigation process and its costs in time and money. This week he explores alternatives to litigation.**

ATLANTA - In resolving a legal dispute, there are formal and informal methods that can be followed. Litigation is the formalized process of filing a complaint in court, proceeding with lengthy discovery and depositions, arguing motions before a judge, and eventually presenting a case to the jury (or judge alone) in a prolonged legal proceeding.

By far, litigation is the most expensive and time-consuming means of resolving a legal dispute. On the other hand, its benefits are:

- You'll get a definitive answer if you complete the entire court process and get a verdict from the judge or jury.
- There's usually a clearer winner and loser – for the person that must score a “W” or “L”.
- A judge can strictly enforce a final judgment in a court case, making the losing party pay up.

Despite these advantages, technology companies should also consider alternative dispute resolution methods. Often, alternative dispute resolution (ADR) provides several advantages over the formalized litigation process in a courtroom.

- ADR can be much less expensive.
- ADR can bring about a faster resolution of the dispute.
- There's less publicity and public scrutiny of the privately conducted ADR process.
- You may avoid the “runaway jury” concern – where the jury renders an extraordinary verdict against one of the parties.

There are several different forms of ADR:

**1. Contractual Resolution** – Consider including a provision in your agreements that enumerates a process for resolving disputes. Often, these provisions set forth a hierarchy of company representatives who are to be contacted in order to address differences of opinion with regard to contract terms. This hierarchical process may allow the parties to resolve their disputes by elevating the issue to senior officers within the company. This hierarchical process may prevent the parties from pulling the litigation trigger too early. Instead, this contractual provision may compel the adversaries to get in a room together to work out their differences. In practice, such a provision can be very helpful, if only to force the lower level executives to resolve their problems rather than forcing them up the management ladder.

**2. Mediation** – Mediation is another alternative to litigation. In mediation, the parties generally select one individual to serve as a mediator. The mediator's role is simple – to work with both sides to bring about an acceptable resolution. The mediator does not sit in judgment of the parties. Rather, he is more like a facilitator, working to enhance communication between the parties to bring about an acceptable resolution. Often, the mediator is an attorney or litigator with experience in representing parties to similar kinds of disputes. As a result, the mediator may be able to assess the strengths and weaknesses of each side's case and communicate them in a professional manner. This allows the parties to gain an objective perspective on the pros and cons of their positions.

The key to mediation is the skillfulness of the mediator. Select your mediator carefully and find a person who has dealt with similar issues on many occasions.

**3. Arbitration** – Arbitration is very different from the mediation process. Arbitration is usually conducted by one or three arbitrators. The arbitrators serve as triers of fact and render judgment – like a judge or jury. On the other hand, arbitration is designed to be more cost effective and timely than a formal judicial process in the court system.

In most commercial arbitration proceedings, three arbitrators are usually selected. Each side will select their own arbitrator, and those two will determine the third arbitrator to sit on the panel. The arbitrators will then hear all of the testimony and related evidence but are generally not subject to the same judicial rules and regulations that exist in the courtroom.

In theory, arbitration should be more timely and economical than a full-blown jury trial. Also, the decision of the arbitrators is generally binding on the parties and may be enforced by a court.

In summary, alternative dispute resolution can be a valuable tool for a growing technology company. The cost of litigation can be enormous and can cause a business plan to be derailed with unexpected expense. By using ADR, the technology company may be able to resolve a dispute more efficiently and economically, allowing management to focus on getting new customers rather than fighting old ones.

*John C. Yates Chairs the Technology Group of the law firm Morris, Manning & Martin, LLP, which has offices in Atlanta, Charlotte and Washington, D.C. He can be reached at [jcy@mmmlaw.com](mailto:jcy@mmmlaw.com) and (404) 504-5444. This column is presented for educational and information purposes, does not represent legal advice and is not comprehensive in its review of the issues discussed above.*