

Technology Is Changing the World of Dispute Resolution



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THINK BACK just 10 years ago. You were taking grainy pictures with your flip phone and, if you were trendy, you were posting in your MySpace account. Even if you had TiVo, you still had to wait at least a week to watch each episode of your favorite show. In just the last decade, the iPhone was introduced, Facebook went public, and e-commerce overtook retail. You can now binge-watch your favorite show at any hour of the day or night, get a private car service in seconds and have food or consumer goods delivered on demand. Drones are delivering packages and cars are starting to drive themselves.

Technology is advancing at rapid speeds, and it is impacting every industry. Even old school industries, like construction, are becoming technical with laser scanning and building information modeling. Gone are the days of tape measures. Now contractors are digitally capturing dimensions and spatial relationships using laser technology. You can walk through your virtual building and make changes before it is even constructed. The professional services industry is seeing similar advancements. Process automation is becoming the norm. Robots are now performing basic accounting functions and preparing tax returns. Our era now has voice-powered personal assistants and autonomously powered self-driving vehicles.

The business world has rapidly embraced technology, and with advances in technology come more sophisticated disputes. We frequently see disputes over cybersecurity, privacy, information breaches, malware, stolen identities, application and software development and other technologies. Because these cases are complex, often requiring forensic analysis and expert testimony, litigation costs are significant. Thus, companies are frequently including alter-

native dispute resolution provisions in their agreements to mitigate costs and improve efficiency. They often look to mediation as an initial step in resolving their problems.

More and more mediated disputes call for technologically savvy mediators who can both understand the technical aspects of the issues and relate to the parties. Time and costs are saved when you do not need to spend a lot of time explaining the technology or the issue to the neutral. Parties worry that “technologically challenged” mediators may have a difficult time understanding the concepts and conveying the message while in private caucus with the other side. They also want a mediator they can relate to. The right personality is needed to put the parties at ease and allow each side to feel that their version of the story is not only heard but also understood. The more comfortable the parties are with the mediator and his/her understanding of the issues, the easier it is for them to work together to find a solution to the parties’ problem.

Technology has also changed the way people interact and communicate with one another. With the use of digital networks, video conferencing, instant messaging, mobile and smartphone technology, and social media channels, most people are communicating through nonverbal means. We use these to talk to our colleagues, friends, and family anywhere in the world nearly every waking moment. Technologies are changing the way entire generations communicate. Millennials are experts at technology, prefer text messaging over phone calls, and most get their news from social media platforms. Social media and text messaging are their main forms of communication. Contrast that with baby boomers that prefer face-to-face meetings or phone calls to communicate. An effective mediator is one who can overcome those cultural differences in communication and bridge the generational gap during the

negotiation process. In an era where technology has created unprecedented complex disputes, dispute resolution professionals who are creative, fast thinking, collaborative, and come up with outside the box solutions bring value to the resolution process. Despite generational barriers, they use open and clear communication techniques to engage the parties to work together to craft a solution to their problems.

Technology is transforming the dispute resolution industry. Online dispute resolution platforms are providing access for consumers to resolve disputes regardless of their geography or jurisdiction. Advanced video conferencing transcends distance, allowing parties to participate in negotiations remotely. Mediations and arbitrations may include the use of I-pads, tablets, Skype, social media as evidence, document-sharing programs, legal industry apps, or tech tools that create visual graphics, allowing parties to show their case in an understandable and engaging way. Because technology is easy to use and convenient, it creates effective ways for parties to access information and communicate their positions. It also opens up new and creative ways for dispute resolution professionals who embrace technology to intervene, and parties and their lawyers to engage in the dispute resolution process.

We have seen revolutionary changes in the last decade with groundbreaking technology and extraordinarily complex disputes. As artificial intelligence continues to advance at rapid speeds, there is no telling what we will encounter in the years to come. Since the only thing constant is change, dispute resolution professionals will need to stay abreast of developments and new approaches to leverage technology to best assist parties in resolving their disputes. As information and communication technologies evolve, so too must our abilities to invoke tools and approaches to solve the legal problems of the future. ☞