Navigating the Future of Technology Disputes: In-house Counsel’s Guide to Embracing Hybrid Dispute Resolution

Commercial and Contracts

Intellectual Property

Litigation and Dispute Resolution

Technology, Privacy, and eCommerce

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Cheat Sheet:

- **AI and technology disputes are evolving**. Traditional arbitration struggles with the complexity of AI and technology-related cases, making litigation necessary for legal precedent and transparency.

- **Hybrid dispute resolution models**. Combining arbitration for technical issues and litigation for broader legal implications offers speed, efficiency, and public accountability.

- **Key actions for In-house counsel.** Counsel should embrace hybrid dispute resolution, stay updated on AI's legal implications, and integrate AI-specific clauses in contracts.

- **Navigating changing regulations.** With increasing regulatory scrutiny, in-house counsel must adapt to evolving laws, ensuring contracts align with consumer protection and AI governance.

As the legal landscape evolves in tandem with the rapid growth of technology, in-house counsel must stay ahead of the curve when managing disputes related to tech contracts. Whether it's the complexity of AI, cloud computing, software licensing, or data security, these areas of technology are

increasingly contributing to the rise of specialized dispute resolution mechanisms. However, as AI and large language models (LLMs) take a more prominent role in tech contracts, a shift in how we approach disputes, combining the benefits of both arbitration and litigation, has become essential. Here's a closer look at how in-house counsel can navigate these evolving trends and build a strategic approach to handling technology disputes.

The evolution of technology disputes: From arbitration to litigation

In the past, arbitration was the go-to method for resolving technology-related disputes. Its appeal was clear: speed, confidentiality, and specialized expertise were paramount in a rapidly changing industry. However, as AI technologies become more integrated into contracts, the traditional arbitration framework is facing challenges that may not be able to keep up with the new complexities.

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For example, AI-driven cases, ranging from intellectual property disputes over AI training practices to algorithmic bias in automated hiring tools, are prompting a resurgence of litigation. These disputes often require transparency, judicial oversight, and the establishment of legal precedents that arbitration, by its nature, cannot always provide.

The limitations of arbitration in an AI-driven world

While arbitration remains a valuable tool for resolving disputes involving highly technical issues, it has limitations when it comes to public accountability and the development of legal standards. AI's inherent opacity, where decision-making processes within algorithms are not always transparent, poses a problem for arbitration, where parties may not fully understand or contest the rationale behind decisions.

For instance, when an AI system denies a loan or disqualifies a candidate from a job, the lack of clarity in the system’s decision-making process can undermine the effectiveness of arbitration. In these cases, litigation offers a way to publicly challenge these decisions and build legal frameworks that set precedents for handling AI-related issues.

Moreover, the confidentiality of arbitration means that the public body of law is not enriched by arbitration decisions. As technology continues to evolve rapidly, this lack of transparency and precedent can hinder the development of a robust legal framework needed to keep pace with innovation.

New! The ACC AI Center of Excellence for In-house Counsel is a brand new resource, designed specifically for in-house counsel, to help legal departments navigate AI with clarity and confidence. The AI Center of Excellence will offer:

- Curated tools and insights
- Peer learning from real-world use cases

- Ethics, risk and governance frameworks, and guidance tailored for Legal
- Leadership strategies for the AI era

Embracing hybrid dispute resolution for the tech era

In-house counsel are already beginning to adopt hybrid models of dispute resolution that combine the best of both worlds: arbitration and litigation. A hybrid approach starts with arbitration to resolve technical issues quickly and efficiently but allows for escalation to litigation if broader public interest or precedent-setting is required. This model ensures that specialized expertise is applied in the initial stages of the dispute while also enabling the legal system to evolve with the changing landscape of technology.

The benefits of hybrid models include:

- **Speed and efficiency**: Arbitration can address technical issues and disputes that require specialized knowledge without the lengthy process of litigation.
- **Public accountability**: If the case involves public interest or creates a significant legal precedent (such as in the case of algorithmic bias), the matter can be escalated to litigation, where the issue can be addressed transparently.
- **Confidentiality for commercial issues**: Disputes around intellectual property, software licensing, or business agreements can remain confidential, preserving sensitive business information.

Strategic steps for In-house counsel in adapting to hybrid models

As technology disputes become more complex, here are key steps for in-house counsel to consider in adapting to this new landscape:Adopt a hybrid dispute resolution strategy

Structure contracts to allow for arbitration in the first instance, but include clauses that enable escalation to litigation if the issue involves public interest or requires the development of a legal precedent. This ensures flexibility and adaptability as disputes evolve.

Understand the role of AI

The rise of AI and LLMs in technology contracts means that in-house counsel need to familiarize themselves with these technologies. Ensuring a deep understanding of AI's legal implications will enable more informed decision-making and the drafting of stronger contracts. Continuous learning through conferences, workshops, and industry collaboration is key.

Review arbitration clauses for AI-specific provisions

Technology contracts, particularly those involving AI, should include clear guidelines regarding

transparency, algorithmic decision-making, and dispute resolution. This could mean integrating clauses that require arbitration panels to consider the specific nature of AI technology and ensure that any issues with algorithmic bias or opacity are addressed.

ACC Members: Download the **AI Toolkit for In-house Lawyers**

Collaborate with peers and regulators

Engaging with industry peers, regulators, and other legal professionals focused on AI and technology law is crucial. This collaboration can help shape best practices and regulatory standards, ensuring that your company stays ahead of new legal developments.

Monitor evolving regulations

As regulatory bodies like the U.S. Federal Trade Commission (FTC) increasingly scrutinize the legality of arbitration clauses in tech contracts, it's essential to stay informed about changes to consumer protection laws and how they may impact dispute resolution. Contracts should reflect these shifts to ensure compliance with the latest legal standards.

Navigating the future: The impact of AI on legal frameworks and emerging regulations

Regulatory agencies worldwide are grappling with how to regulate and govern AI technologies, particularly in relation to dispute resolution. For instance, the FTC has intervened in cases where arbitration clauses were deemed to infringe on consumer rights. This evolving regulatory landscape means that in-house counsel must be vigilant about ensuring that contractual terms align with current legal standards, particularly as they relate to consumer rights, sensitive data, and AI technologies. The legal community must also be prepared to adapt as new regulations and industry guidelines emerge, ensuring that companies remain compliant while also protecting their legal interests.

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The integration of AI into technology contracts will only increase in the coming years. With it, the complexity of disputes will also rise, creating new challenges but also new opportunities for those willing to innovate. Hybrid dispute resolution models provide a dynamic solution to these challenges, allowing in-house counsel to balance the need for speed, confidentiality, and public accountability.

In-house counsel must continue to adapt, learn, and innovate to stay ahead in an era where technology is not just reshaping businesses but also the very nature of legal disputes. By adopting hybrid dispute resolution models, staying informed about AI developments, and working closely with regulators, in-house counsel can help their companies effectively manage the complexities of

technology contracts and disputes.

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Irina Beschieriu

Counsel – Deals and Operations

Irina Beschieriu is a trilingual attorney specializing in tech transactions, outsourcing, and commercial contracts, currently serving as Deals and Operations Counsel at Atos North America, part of Atos Group, one of the main global key players in global digital transformation and IT infrastructure. With an LL.M. in advocacy and dispute resolution from Benjamin Cardozo School of Law and dual bar admissions in New York and Texas, she brings deep expertise in contract lifecycle management, contract negotiation, dispute resolution, data privacy, and cross-border compliance. Beschieriu holds a World Commerce & Contracting CCMAP and a CIPP/EU certification and is a strong advocate for AI literacy in legal practice and the modernization of contract management.