



Technological Advances Help to Resolve Disputes

By **Kim Taylor, Esq.**
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The modern lawyer has a very different lexicon from her predecessors, and an entirely new array of tools for practicing law and managing the practice of law. This is the era of the Internet of Things, where Big Data is increasingly important, and Predictive Analysis is a tool used across virtually every industry and within virtually every major law firm.

At a time where there is unprecedented pressure on in-house counsel to manage legal budgets and where law firms are competing for position in a hyper-competitive market, these tools can help both outside and in-house counsel—as well as business decision-makers—better understand the likely cost involved in litigation as well as potential outcomes. Tools like IBM’s Watson are being used across many sectors to identify opportunities for revenue growth, improve operational efficiencies, make better staffing decisions, mitigate risks and reduce costs.

Today’s lawyers are harnessing these innovations and many others to improve the delivery of legal

services. Is there a place for this kind of innovation in negotiation and mediation? As technologies and our methods of communication evolve, it is natural to assume that our means of negotiating and mediating will also evolve. In fact, numerous advancements have occurred over the past decade that are already impacting Alternative Dispute Resolution.

For example, Picture It Settled uses intelligent software that, according to its website, “has learned negotiation strategy from deep data from negotiation patterns in several thousand litigated cases,” which helps parties anticipate reactions to negotiation moves and improve forecasts for settlement outcomes. Modria provides an online platform for the resolution of disputes across many platforms. Its founders created the online dispute resolution (ODR) systems at eBay and PayPal, which are entirely automated. The European Commission passed regulations in 2013 requiring the establishment of an ODR platform for disputes arising out of online consumer transactions, and the UNCITRAL (United Nations Commission

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in International Trade Law) Working Group III is continuing its work in drafting procedural rules to resolve disputes arising out of cross-border, e-commerce transactions in an online environment. Clearly, the marketplace is changing and adapting to the world of e-commerce. For disputes that arise from online transactions, involving people and companies who have almost never have any kind of personal interaction, it makes sense to employ an ODR mechanism.

Can these tools be used for business disputes, or to resolve tort or other claims, where the parties have an interest in preserving relationships, or resolution requires some venting of feelings and emotions as a form of catharsis? Traditional advantages of mediation are well known. Mediation is confidential, delivers time and cost savings, helps to preserve relationships and gives users control, flexibility and predictability in the face of the unpredictability of litigation outcomes. Conventional wisdom is that these advantages are best realized when the parties meet face-to-face with the mediator, and there has been a great deal of skepticism about whether a fully online platform can be utilized to resolve offline disputes.

Predictably, technology is adapting and ADR providers are creating tools that harness the benefits of an ODR process while allowing the kind of personal interaction that may be necessary to bring a matter to closure. For example, JAMS recently launched JAMSCONnect, a browser-based online video and audio application that offers parties an

efficient mediation alternative when the value or complexity of claims do not warrant a traditional, in-person mediation session. While it can be used for any type of dispute, it is ideal for low to moderate value claims that can be resolved in short sessions. The process requires only a phone and a computer with a webcam, and includes real-time streaming video, virtual caucus rooms for private conversations with the mediator, document sharing, and operator support to help with any technical issues. Other ADR providers are also creating their own processes, some in concert with Modria.

While it's hard to imagine a world where certain disputes are resolved without human interaction, technology will evolve to that point. Already the automation of litigation is underway, and those innovations will impact how parties resolve their disputes in the very near future. Options like JAMSCONnect, Picture It Settled and Modria-powered ODR tools are leading the industry and will help shape how the future of ADR will look. ●

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