



# The digital future of arbitration

## The U.S. lags in use of technology to streamline the entire dispute resolution process, especially arbitration

BY CHARLIE HARREL

Arbitration is an increasingly important means of dispute resolution, both internationally and in the U.S., and many clients now routinely include arbitration clauses in their contracts. Given the current climate in corporate legal departments, where there is pervasive and relentless pressure to cut costs and deliver results in a more accountable way, there is little reason to think that the trend toward arbitration will reverse itself any time soon.

However, there is at least one key area in which the U.S. deviates from current international trends when it comes to arbitration: technology. Domestically, the use of purpose-built technology (computer application programs specific to an industry) to streamline the entire dispute resolution process, particularly in actual proceedings, is still a rarity. That is not the case in Asia and Europe.

The U.S. legal community as a whole may not be aware that in other jurisdictions fully electronic arbitrations (and trials) are becoming much more common, and in some countries governments have been working closely with their legal communities for years to advance modernization initiatives – including concrete steps to make electronic arbitrations an everyday reality.

The efforts of such coalitions have made possible paperless litigation proceedings that accommodate both onsite and remote participation from parties and witnesses in real time. Hearings are conducted with a fully integrated set of digital tools designed specifically for the preparation, presentation and transcription of legal evidence and arguments,

sometimes in multiple languages. And all of this is managed within a single, web-based user interface that all parties and panelists share.

### Singapore and the U.K. lead on the international front

Singapore is emerging as an international leader in post-discovery litigation technology, making electronic filing mandatory in 2000. The country has since established a nationwide system for electronic courtrooms called eLitigation. Singapore has also invested heavily in establishing itself as a regional center for ADR, recently opening a high-tech facility for international arbitrations that offers the combination of a modern venue with state-of-the-art software and services.

Singapore's government and its legal community have joined forces to make a long-term commitment to modernizing dispute resolution proceedings. Fully electronic arbitrations, where a master set of digitized arbitration content is provided to each party, are now an integral part of that vision. Claimants, respondents and arbitral panelists all have web-based access to all of the digitized materials. At the same time, each party retains secure, private access to internal attorney work product, including notes, tags, research, private documents and so on. Parties can perform quick searches of the data set at any time. They can also annotate, categorize and organize documents into custom binders, and share mark-up and commentary among designated users.

A crucial benefit of this setup is that legal insights and strategies remain within a single set of materials instead of getting displaced or lost within complex

email threads or piles of hardcopy documents. All materials can also be hyperlinked for expedient review of key evidence. This “advanced litigation technology” has been deployed in selected legal matters by multiple courts and centers in Singapore and has generated enthusiastic feedback from participants.

Similar developments are at work in the U.K., where a massive international commercial trial in 2011 between a pair of Russian billionaires, Roman Abramovich and Boris Berezovsky, opened the eyes of the legal community to the efficiencies that so-called “trial bundle technology” for electronic proceedings can realize – eliminating an estimated five million sheets of paper, in this particular example. The virtual absence of hard copy documents achieved significant cost and time savings, and the overall efficiency of the technology earned the praise of the presiding judge in the case, who has since become an outspoken and active proponent of electronic bundles and proceedings. Since then, the U.K. has undertaken an ambitious and sustained effort to modernize its entire justice system nationwide with a focus on purpose-built technology as exemplified in *Berezovsky v. Abramovich*, including implementation of fully digital hearings and trials.

### Key benefits

Key benefits of digital arbitrations include paperless proceedings, remote participation, enhanced collaboration and increased security for sensitive materials. In addition to eliminating the “paper shuffle” wherein even the best-prepared attorneys struggle to locate relevant documents when they are most urgently



needed, elimination of paper almost completely mitigates the time and cost of printing and distributing multiple copies of documentation. In high-volume matters, where these costs can reach tens or even hundreds of thousands of dollars, this is a significant advantage in itself.

But the benefits don't end there. In an increasingly global and mobile world where companies and law firms often have widely dispersed offices and employees – and where many of the disputes themselves are increasingly international in nature – the ability for parties, legal team members, technical experts and even panelists to fully participate in arbitration proceedings in real time from remote locations confers considerable advantages for participants from a cost and convenience perspective. Transcriptions of the proceedings can be consulted as they are created. Electronic hearings mitigate the logistical complexity of the hearing process, and in doing so speed up the time to resolution.

The electronic bundle technology also enhances collaboration among legal team members and their clients, regardless of where they are working from. Teams maintain 24/7 access to their own private, secure digital “war room” where they can view and organize all relevant materials, assemble timelines and build arguments, and confer on strategy, both in anticipation of the hearing and during actual proceedings.

In addition, there are incalculable security benefits to confining the distribution of sensitive documents and other information within a single online workspace. Because authorized participants can log in and access arbitration-related materials at any given time once those materials have been digitized and uploaded to the repository, and because they can do so at their convenience from any location, there is no longer a need to create and distribute multiple hard copies, share electronic documents via email, or download files to local computers, mobile devices or flash drives – which are notoriously vulnerable to loss or theft.

### Key technical elements

The key technical elements include cloud infrastructure and purpose-built tools for creating and presenting legal arguments. The technical infrastructure required for digital hearings already exists, has proven its worth in a variety of contexts and is currently in use in diverse settings globally. Secure, scalable cloud computing is the foundation and the core enabler of this infrastructure. It is a primary factor in keeping costs manageable and proportional to case value, ensuring implementation is relatively simple and fast, and providing the flexibility necessary to accommodate different venues and diverse matters.

In the business world at large, the advantages of cloud computing are no longer debatable. Early in the evolution of cloud technology there were legitimate concerns about security, but protocols are now more robust and the consensus has shifted decisively. This is especially true in light of heightened awareness of the vulnerabilities presented by the circulation of sensitive data on local servers and PCs, in email attachments, and on phones, laptops and flash drives.

With cloud-based hearing room technology, all case-related data – documents, exhibits, transcripts, facts and more – resides in a single online location. This virtually eliminates the need for hard copies of documents. It also provides parties with faster, 24/7, web-based access to all case materials from any location and from any computer or mobile device, regardless of platform. Consider also that cloud systems can easily be scaled up or down depending on specific case requirements and data volumes, and they offer much lower overhead and more predictable costs than systems that rely on locally installed software and hardware.

The other major technical requirement for digital arbitrations is software designed specifically for the intensively collaborative work legal teams perform daily in preparation for hearings, trials

and negotiations. This includes a comprehensive, integrated toolset for managing key documents, transcripts, audio and video, research and legal work product in a single workspace. Teams need tools for marking up and annotating documents, custom coding and tagging individual items, and hyperlinking between documents, specific passages and other materials in a variety of media. There must also be a powerful search engine, as well as tools for notification, instant sharing and real-time discussion.

When you integrate these components in a shared infrastructure and provide secure access via a single web-based interface, legal teams engaged in case analysis and preparations for arbitration have everything they need to participate in paperless hearings in multiple jurisdictions across the globe. The technology can be deployed at the inception of a matter or during the main hearing preparation phase. It can also be used to manage the arbitral record over time, organizing key documents by date and facilitating seamless sharing of the record with the arbitrator.

### The U.S. has lagged, but that may be changing

In jurisdictions like Singapore and the U.K., the embrace of technology for dispute resolution has been made possible in large part by formal partnerships between the government and the private sector. In those cases, there has been a shared ongoing commitment to incrementally adopt technology that modernizes the entire litigation lifecycle, from e-filing to collaborative case management to proceedings in the courtroom or hearing room.

The U.S. legal system, on the other hand, is much more fragmented. States tend to go their own way, and modernization projects are at different stages in different places, reflecting the unique priorities and capabilities of local jurisdictions. Counties with larger populations and more money to work with tend to be further along in technological initiatives.



In domestic courtrooms, adoption of the kinds of technology I have described here will likely depend on the perceptions of individual judges, their comfort level with innovation and their understanding of digitization as a viable means of driving efficiency and cost savings.

But arbitrations, particularly international arbitrations, may soon tell a different story. This could be the most promising area for the next wave of technological innovation in the U.S. legal system, in part because international arbitrations often present vexing logistical and resource-draining complexities – multiple parties, geographically dispersed participants and multiple languages, to name a few – that cry out for solutions that can dramatically simplify processes. The cost- and time-sensitive mindset that many participants bring to arbitrations may also be an important contributing factor.

A recent international arbitration in Miami may well signal what the future holds in the U.S. when it comes to technological innovation. The same cloud-based, integrated legal collaboration and trial management technology that is being used in proceedings abroad was deployed here, combining electronic evidence presentation with digital trial bundle software and a three-language interpretation service to create the first fully

digital and essentially paperless hearing room in the U.S.

### “Pop up” digital hearing facility

The Miami example is interesting for two additional reasons. First, the two parties in the arbitration – which were represented by large multinational law firms with case teams spanning branches in the U.S, the U.K. and Europe – found it advantageous to share integrated technology infrastructure costs and use a common interface rather than electing to bring their own preferred tools and services into the hearing process. Second, deployment involved the establishment of a “pop-up” high-tech hearing facility enabled by the radical flexibility of cloud computing, which makes it possible for all participants, whether onsite or in remote locations across the globe, to fully participate in real time. This pop-up/shared-technology model is now being replicated in arbitrations in other U.S. jurisdictions. The model has the unique advantage of establishing – virtually overnight – meaningful, cost-effective technological innovation in hearing rooms that do not offer state-of-the art facilities.

### A vision for the future

In closing, let’s remind ourselves that all the developments described in this article focus on a single core concept:

real-time legal collaboration in a global, mobile world. Whether it happens inside a hearing room or courtroom or in the intensive preparations legal teams undertake in anticipation of proceedings, substantive legal work is relentlessly collaborative and complex. That will never change, but we have now reached a point where technology can be truly transformative. It won’t be long before the combination of digitized legal evidence and work product, purpose-built software and the very powerful advantages of secure cloud computing will make a significant difference in U.S. legal practice, and we will likely feel the first effects of that transformation in arbitrations.

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