

Arbitration Tech Toolbox: What's in Your Toolbox?

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Arbitration Tech Toolbox is a new series on the Kluwer Arbitration Blog that aims to stimulate broader discussion and debate in the arbitration community on arbitration-related technology, its impact, and its future. We believe everyone stands to gain from a discussion of best practices surrounding the ongoing adoption of new technologies and identification of available tools.

A smorgasbord of available tools

The days of stocking one's Arbitration Tech Toolbox with only a telephone, word processor and legal research engine are long gone. The profusion of new technology that the modern sophisticated arbitration practitioner is expected to master – or at least be aware of – has become increasingly overwhelming. The level of discourse is also becoming increasingly sophisticated on platforms such as our Blog, ArbTech, and others (as discussed in a recent blog post). Other blog posts in the past few years have dealt with an array of fascinating technology-related issues, including use of Artificial Intelligence and Natural Language Processing, cybersecurity (and from an institutional perspective), electronic document management software, blockchain technology, Robotic Process Automation, Online Dispute Resolution and visual aids.

For those convinced of their own technological ineptitude, it may be tempting to just throw up one's arms in despair and eschew such tools altogether, but that could result in many unfortunate missed opportunities for improving one's practice. As Goethe forewarned, "Everything is hard before it is easy."

To effectively navigate these turbulent technological waters, it is critical to first understand which types of tools are the most essential, which are important, which are potentially helpful, which are the "cherry on top," and which are superfluous for one's particular practice. Using private law practice groups as an example throughout this post, this is important even for leaders of the largest, most sophisticated arbitration practice groups with deep tool pockets. It is especially important, though, for small and medium-sized practice groups, where a decision to invest the money, time and energy required to adopt one or more major technological tools will no doubt have an impact on whether the practice group can support other major tools in the near future. This is not only due to financial constraints but also because each incremental technological advancement will take time to achieve full-scale adoption within a practice group, meaning that introducing too many innovations at once can prove distracting and counterproductive.

Cue the IBA Arb40 Guide on Technology Resources for Arbitration Practitioners, which has been our inspiration for this series. The Guide provides an orderly taxonomy of different tool types that form part of the modern arbitration practitioner's standard arsenal. The Guide features representative but non-exhaustive lists of popular tools for audio and videoconferencing; document collection, review and production; management and transfer of arbitration data; presentation of graphics and evidence; virtual reality and augmented reality; analytical tools and mind mapping; translation and interpretation; and cybersecurity and data privacy. More recently, the Guide's creators have added a section on resources that are specific to the technological needs of virtual hearings.

Among other potential tool categories, an important one would be legal research platforms with increasingly sophisticated technology catering primarily to the needs of international arbitration practitioners. In addition, whole other classes of technological tools that are not specific to arbitration but are used by arbitration lawyers on a daily basis could be added - e.g., marketing tools, scheduling tools, etc.

Tool priority

Overall utility is key when it comes to tool selection.

In the absolute essentials category, the fundamental necessity for all practice groups of supplying one's toolbox with optimal audio and videoconferencing solutions, as well as sophisticated legal research tools, is well-understood. Equally important but less well understood are tools for cybersecurity and data protection. The IBA Cybersecurity Guidelines and the ICC-NYC Bar-CPR Protocol on Cybersecurity in International Arbitration are two resources that can help one better understand these tools. Also, document translation technology is of obvious primary importance for most arbitration practitioners working on an international scale as the vast majority of international arbitration cases will involve at least some translation.

For practitioners who are part of small to medium-sized practice groups in the midst of scaling up, adding headcount and/or taking on increasingly high-value and sophisticated matters, tools from the categories of (i) document collection, review and production, including document review platforms and software / artificial intelligence applications for document review, and (ii) management and transfer of arbitration data (i.e., the hosting, managing, organizing, sorting and transferring of voluminous documents and submissions gathered and/or exchanged in an arbitration) offer enormous opportunities for increasing productivity and overall effectiveness on a daily basis. While these tools may be absolute essentials in the major international firms, the more rudimentary forms of these tools can be enough for small to medium-sized firms in the interim.

The remaining categories of tools - including those for presentation of graphics and evidence, virtual reality and augmented reality and analytical tools and mind mapping - are indeed helpful but may seem more like a "cherry on top" compared to the other tools. However, this is probably only due to their relative "newness" and more case-specific use. Use of these tools could depend on whether the other side is expected to use them.

Reducing technological disparities and sharing best practices

Despite the increased availability of revolutionary technological tools and the plethora of online resources on how to use them, there will inevitably be disparities in terms of actual adoption and use. A recent breakdown of current use of technology in arbitration in the *Journal of International Arbitration*^[fn] Kevin Ongenae & Maud Piers, *Procedural Formalities in Arbitration: Towards a Technologically Neutral Legal Framework*, *Journal of International Arbitration* (Scherer (ed.); Feb 2021) (discussing the *ICC Commission Report on Information Technology in International Arbitration* (2017)).^[/fn] noted the following key concerns:

“compatibility issues when the parties and tribunals use different hardware and software or have a different level of technical ability; data integrity issues regarding information that is electronically stored or exchanged; equality of arms and due process concerns, e.g. in the event that one party objects to the IT proposed by the other side for a variety of reasons; confidentiality red flags when sensitive information is being stored or communicated, etc.”

It is submitted that, even with regard to technology which often favors the more powerful party, a rising tide lifts all boats. All practitioners could eventually stand to gain with the great influx of technology we have witnessed in recent years. There are a few ways to expedite this process.

First, more sharing between co-counsel law practices of specific information on available technological tools and how they should be properly exploited would lead to greater integration of work and streamlining of work processes in many cases.

Second, greater efforts should be made to prevent situations of technology mismatch or, worse, inequality of arms that substantially prejudices the weaker party. This could be achieved through proactive efforts by institutions and (within limits) tribunals to put parties on a more equal footing when appropriate.

Third, in this age of countless webinars and unprecedentedly extensive virtual exchange, more frank, open and technocratic discussions on finding technological solutions to discrete challenges should be had.

Conclusion

Ultimately, practitioners should ask themselves on a regular basis: “What tools do I need in my Arbitration Tech Toolbox in order to be most effective in my job?” To paraphrase Benjamin Franklin, for every minute spent acquainting oneself with new technological tools, an hour is earned. Stay tuned.

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Further posts on our Arbitration Tech Toolbox series can be found [here](#).

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