Kluwer Arbitration Blog

A Case for Paperless Arbitration

Leon Kopecký (Schoenherr) · Sunday, February 5th, 2017 · Schoenherr

Having disposed of yet another forest worth of pristine hearing bundles, I wonder: when will arbitration finally go paperless?

Gillian Lemaire asked the same question in a 2014 piece called "Where Do We Stand?" She looked at the legal and factual obstacles that paperless arbitrations face. Finding that, in reality, there were few, she proposed that much rests on individual case assessment, and joint efforts of tribunals and counsel.

One cannot but agree. At the same time, one cannot but wonder why, three years later, so little progress has been made. True, in a few exceptional cases, tribunals concede to paperless filings, and even hearings. But that is not the rule.

I think that it should be. Absent some elusive principle that justice can only be done on paper, there is nothing short of an award that must be printed, bound, packed, and shipped halfway around the world, usually only to suffer the fate of marketing collaterals. And, with portable screens now resolving better than the eye itself, hearings, too, can be paperless, obviating tedious flipping through pages and quests for missing printouts.

So why are they not? Commentators put it to apathy and aversion to new technologies. I would not agree. I witnessed the most seasoned of arbitrators wielding smartphones and tablets, often following the record not in the provided bundles, but on their devices. Yet, those same arbitrators (with commendable exceptions) also asked to be mailed hard copies of each and every brief, exhibit, and testimony; and instructed that hard copies of the entire record be made available in the hearing room.

Of course, arbitrators should have the right to ask for that. We all like to scribble, and paper does at times beat silicon. But this should be the exception, not the rule. Arbitral institutions should not just allow, but insist on paperless submissions, and discourage hearings with the carbon footprint of a small cruise ship. Counsel should take heed of the term core bundle: the largest of cases aside, those should never measure in truckloads.

But what is the last hurdle, at which general paperless arbitration still fails? I submit – and hope for an inspired discussion in the comments – that this hurdle is standardisation. In arbitration, we have technical standards for communication (email); submission (Word); documentation (pdf); remote collaboration (telco); document production (Redfern); and even exhibits are stamped identically in most cases. But no standard exists for interactive briefs, with formats and usability varying greatly;

and much less so for hearing management software, despite the fairly limited number of actually needed features (display, highlight, possibly search).

The international arbitration community – institutions, arbitrators, counsel – should agree on such standards, and abide by them. Responsibility falls on all; but it should probably be the institutions who take the lead. After all, their reach is wider, their resources less strained, and their stance impartial. Together with the tribunals, they can ensure the equal treatment of parties, with no prejudice to those technologically disadvantaged.

Once we all turn and highlight electronic pages in the same way, we can bid adieu to the current lowest denominator of our profession—paper. Those few who cannot do without it may choose to opt in, but with local printing facilities replacing international shipping.

Those fearing costs: bear in mind that portable devices and software can be reused, but printing costs are always sunk. Staff costs stay the same. And those who consider making interactive briefs and electronic hearing bundles to be a formidable exercise: keep calm—it will almost certainly not be yourself doing it.

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