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Intellectual Property and Information Technology related  
Alternative Dispute Resolution\*\*

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Intellectual Property refers to legal rights that protect creations of the mind, such as inventions, designs, trademarks, and artistic works. Intellectual Property rights provide exclusive ownership and control over these creations, enabling individuals and organizations to protect and monetize their innovations. Information Technology on the other hand refers to the use, development, and management of computer-based systems, networks, and software to store, process, transmit, and retrieve information.

IT and IP are in many ways interconnected, for example (a) IT encompasses **software** development, and software can be protected under **copyright law** as a form of intellectual property. Software developers and companies can copyright their software to prevent others from copying or using it without permission. (b) **Patents** protect inventions and **technological innovations**. In the IT field, patents can be obtained for novel and non-obvious inventions, such as new algorithms, hardware designs, or software processes. Patents provide exclusive rights to the inventors, allowing them to prevent others from making, using, or selling their inventions without permission. (c) IT plays a significant role in **branding** and marketing efforts. **Trademarks** are valuable intellectual property assets that protect brand names, logos, and symbols associated with goods or services. IT systems are often used to create, manage, and protect trademarks, ensuring their proper use and preventing infringement. (d) **Trade secrets** are valuable, confidential business information that provides a competitive advantage. In the IT realm, protecting trade secrets often involves robust **IT security** measures to safeguard sensitive data, proprietary algorithms, customer lists, or manufacturing processes from unauthorized access or theft. (e) The **digital** nature of IT has given rise to challenges related to copyright infringement and intellectual property **piracy**. Unauthorized copying, distribution, or use of copyrighted software, music, movies, or other digital content is a significant concern. IT systems and technologies are employed to detect and prevent such infringements and protect intellectual property rights.

IT and IP have become more interconnected than ever before due to several factors like Digital Transformation, Software and Technology Innovation, IT advancements, including software development, artificial intelligence, machine learning, and Internet of Things (IoT), Data and Data Protection, Online Branding and Trademark Protection due to growth of e-commerce and online platforms and Dispute Resolution and Enforcement.



When it comes to dispute resolution, there are certain similarities between IT and IP. Here are some key similarities: (a) Disputes in both IT and IP often require **specialized knowledge and expertise**. IT disputes may involve complex technical issues related to software, hardware, networks, or data security. IP disputes may involve intricate legal concepts, such as patent infringement, trademark dilution, or copyright violations. In both cases, resolving the disputes effectively often requires the involvement of professionals with expertise in the relevant domain. (b) **Alternative dispute resolution** methods like mediation and arbitration are commonly used in both IT and IP cases. These methods aim to resolve disputes outside of traditional court proceedings, offering a more efficient and cost-effective approach. Mediation involves a neutral third party helping the parties reach a mutually acceptable resolution, while arbitration involves a neutral arbitrator or panel making a binding decision. Both methods can be beneficial in resolving complex IT and IP disputes. (c) In both IT and IP disputes, **technical evidence** plays a crucial role. In IT disputes, technical evidence may include source code analysis, system logs, network configurations, or forensic data. In IP disputes, technical evidence can include prototypes, design documents, patent specifications, or expert opinions. The presentation and analysis of such technical evidence are essential for understanding the issues at hand and reaching a resolution. (d) IT and IP disputes often involve **international or cross-border** elements, which can pose jurisdictional challenges. In the case of IT disputes, where online activities and data may transcend geographical boundaries, determining the appropriate jurisdiction for resolving the dispute can be complex. Similarly, IP disputes may involve infringements or violations occurring in multiple jurisdictions, requiring careful consideration of applicable laws and international treaties.

(e) Both IT and IP disputes rely on **precedents and case law** to interpret and apply relevant legal principles. Precedents set in previous cases help guide judges, arbitrators, and mediators in determining the outcomes of current disputes. As technology evolves and new legal challenges emerge, IT and IP dispute resolution processes adapt and develop through the establishment of new precedents and case law.

There are institutions and organizations that deal with either IT and IP or both alternative disputes resolution. These institutions provide specialized services and expertise to help parties resolve conflicts related to intellectual property, Information Technology and/or IP in the context of information technology. Here are a few examples: (a) **World Intellectual Property Organization (WIPO)**: WIPO is a specialized agency of the United Nations that deals with intellectual property matters. It provides a range of services, including mediation, arbitration, and expert determination, for resolving disputes related to patents, trademarks, copyrights, and other forms of intellectual property. WIPO's services cover various technological fields, including IT. (b) **International Chamber of Commerce (ICC)**: The ICC offers dispute resolution services, including arbitration and mediation, through its International Court of Arbitration and International Centre for ADR (Alternative Dispute Resolution). The ICC handles commercial disputes, including those involving intellectual property rights in the context of IT and other industries. (c) **Silicon Valley Arbitration and Mediation Center (SVAMC)**: SVAMC is a nonprofit organization that focuses on alternative dispute resolution in the technology sector. It offers mediation, arbitration, and expert evaluation services for technology-related disputes, including those involving intellectual property. SVAMC collaborates with leading technology companies, law firms, and industry experts to provide efficient and effective conflict resolution. (d) **American Arbitration Association (AAA)**:



The AAA is a widely recognized organization that offers arbitration, mediation, and other dispute resolution services across various industries, including technology and intellectual property. The AAA has offices and panels of arbitrators and mediators in Silicon Valley who handle IT and IP disputes. (d) There are few other institutions who handles IT-related disputes as part of their broader arbitration services. Besides, many countries have intellectual property offices/tribunals that address IP and IP in the context of IT disputes.

The common IP disputes, IT disputes and/or IP disputes in the context of IT are as follows: (a) breach of licensing agreements (e.g., trademarks, patents, copyright, industrial design, software), access by third party, continuation/retention etc (b) research and development agreements and related IP rights (c) technology transfer agreements (d) distribution agreements, franchising agreements (e) Information Technology agreements (f) data processing agreements (f) joint venture agreements on development and research etc(g) consultancy agreements (h) art marketing agreements (i) digital copyright and piracy (j) copyright collective management(k) trade secret and cyber security etc.

Traditional forms of disputes resolution through court system are often found ineffective in the context of IT and IP disputes due to several lack of resources and delay. However, in the context of alternative dispute resolution of rapidly evolving IT and IP industry, there are still lot of scope for growth in terms of resources, building institutional capacity, reaching international treaty etc.

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