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Taking advantage of ADR in the entertainment industry

IP cases in the entertainment industry are great candidates for mediation and arbitration

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As courts throughout the U.S. have become more and more backlogged with cases, and as the financial stakes in litigation have grown increasingly larger, so too has the need for quality alternative dispute resolution (ADR) mechanisms. Certain substantive legal areas lend themselves particularly well to ADR. Intellectual property/entertainment matters are at the top of the list of practice areas for which ADR is ideally suited.

The importance of secrecy and privacy, the need for expertise and the flexibility that ADR offers are three reasons why intellectual property and entertainment practitioners should use ADR as much as possible. Every time a lawsuit is filed, it becomes public record. Reporters scour the case filings for interesting cases to report. Parties can avoid this unwanted publicity by agreeing to participate in a pre-filing mediation. If successful, the case is never filed, the facts remain confidential and the parties reach a business-like resolution while saving substantial attorneys' fees. Because many parties often have ongoing relationships to preserve, an early resolution is also likely to maintain that important relationship.

In a recent case, a party claimed that a Fortune 100 company had infringed its copyright in its national television advertising campaign. The alleged infringing television commercials were actively running. To avoid the potential negative publicity associated with a copyright infringement lawsuit, not to mention the possibility of a preliminary injunction preventing the commercials from running, the parties agreed to participate in pre-suit mediation. The Fortune 100 company was convinced that it and its advertising agency had not engaged in copyright infringement. Nevertheless, to avoid the negative publicity and business disruption, the company paid a sizeable amount of money to settle the case. The parties entered into a confidential settlement that never saw the light of day.

In addition to using pre-suit mediation, entertainment and IP cases make great candidates for binding arbitration. If the parties have not previously entered into a contract with an arbitration clause, the parties can still agree to binding arbitration before suit is filed. Among many other advantages, arbitration is private. Therefore, even if an early mediated settlement can't preserve the parties' business relationship, the matter may be kept private through arbitration instead of the courts.

IP and entertainment matters often involve complex legal issues and technical industry concepts, which may be difficult for a jury to understand. By using arbitration and mediation, the parties can select ADR professionals with substantial experience in entertainment and intellectual property matters. By selecting neutrals with unique, practice area-specific experience, the parties can save time by not having to educate judges and jurors with little to no knowledge of the industry and the law. Accordingly, although the parties may not be happy with the outcome of every case in arbitration—one party or the other generally is not happy with the result of any case—at least they will have the peace of mind of knowing that their decision maker was informed and up to speed on the issues.

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