



# Technology disputes checklist

## At a glance:

When a dispute arises:



**Identify the issues:** Determine the main issues central to the dispute, including relevant governing law and jurisdiction, to devise a resolution strategy.



**Consider insurance cover:** Check if the dispute is covered by insurance, including legal expenses insurance, and notify insurers if required.



**Understand time limits:** Verify applicable time limits, both contractual and statutory.



**Manage documents and property:** Develop a strategy for managing documents, including electronic ones, understand what the key documents are and how to control the creation of new documents.



**People and team selection:** Identify involved individuals, understand the technology at issue, and consider the need for experts or external lawyers. Maintain contact with relevant witnesses and assess the benefits of an early merits assessment.



**Consider our top tips:** Utilise our checklist below when a technology disputes arises.

# Top tips for in-house lawyers dealing with technology disputes

Technology disputes can be complex. It can be difficult to remember everything while trying to get to grips with the factual/legal issues and putting in place a litigation strategy. Certain key issues must be considered to minimise risk and to ensure the efficient management of the dispute. Below is a checklist of key steps to consider when dealing with a technology dispute.

## Identify the issues

You should identify the main issues central to the dispute (including relevant governing law/jurisdiction). This will assist in determining your objectives and help you to devise a strategy to resolve matters.

## Consider insurance cover

The next step is to determine whether the dispute is, or may be, covered by insurance, including legal expenses insurance. Ask yourself whether you need to notify insurers. Policy terms may require notification of the circumstances.

## Time limits

Check the applicable time limits, whether contractual or statutory, and in particular, check if any limitation period is about to expire. If you have been served with a court document, arbitration proceedings or other formal notification of a claim, determine the time limit for responding.

## Documents (including electronic documents) and property

- Devise a strategy for identifying, locating, preserving, collecting and reviewing documents. The definition of "document" in some jurisdictions is broad and can cover electronic documents, such as email, photographs, plans, pictures and logos or html documents.
- The disclosure obligations should be communicated to employees and any routine document destruction should also be halted.
- The creation of new documents should be controlled, particularly internal communications, as these may be disclosable.

## People and team selection

- Identify who is involved so that you can contact them to find out more information about the dispute and interview them. Consider whether or not you understand the technology that forms the subject matter of the dispute. If not, do some research on the subject matter and identify a relevant tech savvy person who you can discuss it with.
- Check whether anyone has left the business and put in place procedures for staying in contact with all relevant witnesses. Are they still on friendly terms with the business? Another element is to consider whether your opponent's former employees can be contacted as they might be prepared to help you.
- Determine whether and when an expert should be instructed if, for example the dispute involves a technical issue.
- Consider whether and at what point to call specialist technology disputes external lawyers and, for multi-jurisdictional matters, whether and when to instruct overseas lawyers. Finally, consider the benefits of an early merits assessment to assist in agreeing a commercial strategy that fits your business objectives.

## Value/cost/benefit

How much is the dispute worth? Can the other party afford to pay the claim? You need to determine where the assets for enforcement are.

Is there an ongoing commercial relationship? This will be relevant in any settlement negotiations. The likely cost of pursuing/defending a claim should be calculated. Do you need to obtain a case budget to help control costs?

## Settlement, dispute resolution and alternative dispute resolution (ADR)

Most disputes are settled without the need for formal proceedings and, usually, it is best to start negotiations as soon as possible before matters become too acrimonious.

If there is a written agreement, check the dispute resolution provisions. Is there an agreed escalation process to follow? Are these procedures obligatory or can you decide how to determine the dispute?

Even if there is no agreed dispute resolution process, consider whether forms of ADR, such as mediation, would be useful/cost effective at this stage.

## Risk, regulatory and reputational issues

Is this a business-critical dispute or is regulatory intervention possible? Does the tech that forms the dispute give risk to new legal issues? Determine whether immediate action is required to prevent any further potential damage from arising (for example, a product recall or a software licensing issue) and whether you need assistance in managing the process.

Which parts of the business should be consulted and does the board need to be involved?

If there is a risk of adverse publicity, find out whether you require professional assistance to deal with the potential publicity.

If the dispute involves a jurisdictional issue, acting quickly is

important to ensure that proceedings are determined in this jurisdiction. Assess whether you need an immediate injunction, freezing order (when the other side is at risk of dissipating assets) or a search order (when the other side may destroy evidence), in which case speed will be vital.

## Correspondence and privilege

Identify who will communicate with the opposite side and team members. This will ensure an efficient and co-ordinated approach.

In many jurisdictions, only communications made between the lawyer and their client for the purposes of giving or obtaining legal advice will be privileged. Creating documents for administrative or management purposes will not generally be considered privileged. Ensure that privilege is maintained by not disclosing privileged material to the other side or by making sure that it does not go in the public domain. Keep all privileged material separate and clearly identifiable.

Keep any communications with your external lawyers in a separate file and control to whom any advice is circulated within the business to maintain privilege. Further, consider whether to make an offer/explore a resolution. If so, consider if any correspondence should be marked "without prejudice and subject to contract."