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ADR for the global technology sector

The Silicon Valley Arbitration and Mediation Center (SVAMC), a non-profit based in Palo Alto, California, serves the global technology sector. SVAMC advances the use of arbitration and mediation by companies and individuals involved in technology and technology-related business disputes in Silicon Valley, throughout the US and around the world.

SVAMC serves the global technology sector by promoting business-practical resolution of disputes. SVAMC works with leading technology companies, law firms, neutrals, alternative dispute resolution (ADR) institutions and universities to promote the effective and efficient resolution of technology disputes and related complex business disputes. SVAMC does not administer cases; rather, it collaborates with leading ADR institutions in addressing the merits of the use of ADR for resolving technology and technology-related disputes.

SVAMC publishes the annual List of the World's Leading Technology Neutrals, commonly referred to as 'The Tech List,' a peer-vetted list limited to exceptionally qualified arbitrators and mediators in the US and globally with substantial experience and skill in the technology sector.

SVAMC operates internationally in affiliation with the Global Technology Dispute Resolution Council (GTDRC) to support the efficient resolution of technology and technology-related disputes around the globe.

Focus

Launched in 2015, SVAMC works to serve the specialised needs of the technology sector and serves as a bridge between the sector and the ADR community. In so doing, SVAMC is a leader in a broader movement advancing the use of arbitration, mediation and other ADR in new industry sectors and geographic markets.

SVAMC provides educational programming and other resources to technology companies and law firms serving the technology sector. SVAMC promotes the use of arbitration, mediation and other ADR procedures as a means for providing practical technology dispute resolution without the cost, time delay, formality and uncertainty associated with going to court. SVAMC supports technically proficient and business practical dispute resolution.

SVAMC serves a wide variety of technology industry sectors, including high technology, telecommunications, biotechnology, materials sciences, alternative energy and venture investment, as well as other industry sectors implementing technology.

Why technology ADR?

Technology ADR offers the potential for efficient decision-making and cost-savings for the technology industry. This efficiency allows technology companies and their business partners to better focus their resources on innovation and development of new technologies.

The technology sector is increasingly globalised. Technological advances, particularly the Internet, allow intellectual property to be transmitted around the globe in milliseconds. These advances also allow for the design, development and distribution of technology products services throughout the developed and developing world.

Traditional dispute resolution mechanisms, particularly national courts, are challenged in serving the sector, particularly with respect to cross-border disputes. Technology companies require fast, reliable and efficient dispute resolution, and enforcement that spans national borders.

Historically, technology development was largely limited to industrial centers in the US and Western Europe. Technology companies relied on local courts, which developed varying degrees of expertise in handling intellectual property and other technology-related disputes. Today, the design, development and distribution of technology is decentralised. Significant design and development work is undertaken in China, India and in many developing countries in Asia and in Eastern Europe. Advances in transportation logistics allow product to be manufactured in distant locations. Significantly, many of today's technology advances are provided online and distributed as a service. This globalisation calls for decreased dependency on local courts and more efficient, internationally focused dispute resolution mechanisms.

In the past, Western-based technology companies had negotiating strength over Asian and Latin American suppliers, and were able to select dispute resolution forums of their choice. Today, many established technology companies have less negotiating strength, particularly as they try to compete in emerging markets in Asia. The result is that there is a demand for technology dispute resolution outside traditional industrial centers. The complication, however, is that many of these emerging markets have limited expertise in addressing intellectual property and complex international business disputes. Accordingly, for one side, there is a distrust of the burdens and uncertainty of common law courts and juries. For the other, there is a concern over the capabilities and impartiality of a foreign judiciary and the reliability of decision-making in developing countries.

In all cases, the speed of judicial decision-making does not keep pace with advances in technology, often resulting in technology becoming obsolete long before a court resolves a dispute. Established arbitral institutions in the US and Europe and new arbitral institutions in Hong Kong, Singapore, Kuala Lumpur and elsewhere in Asia, as well as in South America and the Middle East, are moving quickly to address these concerns.

Technology companies are unique because their business and legal teams are often relatively young and inexperienced with respect to legal processes. The start-up entrepreneurs and millennials who run today's technology companies have had limited exposure to courts and ADR. They are often too quick to rely on outside counsel, who are too comfortable with litigation

and antagonistic with respect to arbitration and ADR. Although one would anticipate the benefits of cost and time savings would be attractive to corporate counsel, their principal goal is to prevail. However, as companies mature they increasingly demand efficiencies from outside counsel.

Technology companies have always prided themselves on innovation, speed and efficiency. Deal-making is highly valued and ongoing relationships are often critical. In most cases, there was a reluctance to have trade secret and other confidential information aired in public forums. Accordingly, litigation was often viewed as a last resort. As the sector has internationalised, there is a growing demand to resolve disputes out of court. Accordingly, there are increased opportunities for technology companies and their business partners to turn to mediation, conciliation and, if needed, arbitration in a private setting.

In the past, there were uncertainties regarding the availability of preliminary relief in arbitration and the enforcement of arbitral awards involving intellectual property. Over time, as technology arbitration has grown, the significant majority of jurisdictions have provided assurances that technology disputes can be resolved through arbitration. Leading arbitral providers have also addressed concerns by ensuring their rules provide for interim and emergency relief, as well as appellate arbitration and other innovations requested by technology companies. In common-law jurisdictions, there is a greater acceptance of discovery procedures for disputes between common-law parties. Accordingly, the time and cost-efficiencies that can be obtained through carefully managed arbitration now outweigh historical concerns over its utility.

Technology ADR is also on the rise because courts have been unable to address the workload and provide efficient and effective results. As the legal teams in technology companies handle more international work, they have come to realise the benefits of arbitration in terms of potential cost efficiencies, expert decision-making and multinational enforcement of awards. Likewise, in many instances, relying on mediation to settle a dispute is a cultural preference and simply more practical and efficient.

SVAMC's role

Through its educational and outreach programmes, SVAMC works with US and international technology companies, law firms, ADR providers, neutrals and universities to engage in an open dialogue on the costs and benefits of using of arbitration and mediation to resolve technology disputes. More broadly, SVAMC endeavors to find and develop efficiencies in the resolution of technology disputes both in and out of court.

SVAMC's approach is innovative and multifaceted. SVAMC addresses several key needs in the technology ADR sector:

- educating potential users of the benefits and risks of using different forms of arbitration and mediation to resolve technology disputes;
- connecting users with skilled legal counsel in the field;
- providing users a peer-vetted list of leading neutrals with technology expertise;
- gathering industry feedback for institutional providers and government lawmakers; and
- advancing the use of new technologies to improve dispute resolution.

The sections below detail various SVAMC activities that encourage effective and cost-efficient technology dispute resolution.

Notably, SVAMC collaborates with the entire technology dispute resolution community. SVAMC does not offer neutral

services; rather, it works directly with technology companies to address business needs, helps technology companies better understand ADR opportunities, connects the technology sector with qualified law firms, providers and neutrals, and serves as a clearing-house for academic focus in technology dispute resolution.

Presentations and programmes

The core of SVAMC's work is educational programming that is offered on a complimentary basis to technology companies. Often, the programmes are presented privately to corporate legal teams. SVAMC also collaborates with interested law firms to educate its client base or assist in a business development visit. SVAMC is also working to develop technology ADR training and certification programmes for law firm counsel and other practitioners.

Over 50 technology-focused presentations are currently listed on the SVAMC website. Programmes include topics covering technology arbitration and mediation strategies and planning; technology ADR procedures, technology contract/commercial disputes; technology competition disputes; corporate technology disputes; intellectual property disputes; and international disputes. Many of the programmes focus on specific segments of the technology sector, such as IT, biotechnology or alternative energy. Other programmes are country specific.

The SVAMC website 'Programs' page serves as an online marketplace where companies and their counsel can readily access an applicable programme category or title, and the credentials, expertise and contact information of each respective speaker. The breadth and depth of these programmes reflect well on the expertise of the presenters.

SVAMC has collaborated with many leading institutional providers and other professional groups to provide educational programming. Programming partners to date include: the American Arbitration Association/International Centre for Dispute Resolution (ICDR); the International Chamber of Commerce Court of Arbitration (ICC); the London Court of International Arbitration (LCIA); the CPR Institute for Dispute Resolution; the World Intellectual Property Organization (WIPO); SIAC and HKIAC; and the Association of Corporate Counsel (ACC); the College of Commercial Arbitrators and the Chartered Institute of Arbitrators. SVAMC has co-sponsored several technology ADR-focused events in New York, Silicon Valley and Singapore. Plans are underway for additional programmes in Hong Kong, Shanghai and throughout Europe.

SVAMC also provides resources to courts through judicial ADR programmes in which highly qualified neutrals assist the parties in the resolution of technology-related disputes.

Membership

SVAMC offers general membership and young practitioner membership opportunities to corporate and law firm technology lawyers, neutrals, academics, judges, government officials, institutional professionals, young lawyers and others. Although applicants must meet membership criteria, the goal is to have a broad-based membership representative of the entire technology dispute resolution community.

SVAMC members collaborate with thought leaders in international technology, business, government and law. They learn about the technology sector and innovations in technology dispute resolution and are welcomed to collaborate and participate in all SVAMC programmes. Members also serve an advisory function; they assist SVAMC in its mission to improve technology

dispute resolution and participate in committee objectives. SVAMC publishes member newsletters and profiles members active in the sector.

SVAMC members speak frequently at conferences focusing on technology and ADR. The SVAMC website promotes technology ADR-related events and notes where members will be speaking. Additionally, SVAMC is in the process of launching a webpage devoted to technology ADR articles, including articles written by its members.

By offering memberships, SVAMC reaches out and involves the entire technology dispute community. It encourages fundamental collaboration across a wide range of legal and ADR professionals, academics, students and government officials connected to technology and dispute resolution.

In late 2017, SVAMC and GTDRC plan to introduce a Young Practitioners forum. Through this Y-SVAMC initiative, SVAMC will offer programming developed by and directed to students and new practitioners.

The List of the World's Leading Technology Neutrals

SVAMC publishes the highly regarded 'The List of the World's Leading Technology Neutrals', commonly referred to as 'The Tech List'.

The Tech List is peer-vetted and admission is by invitation only. Listed arbitration and mediation professionals have exceptional experience and skills in US and international technology dispute resolution. Appointees to The Tech List are qualified by national and international ADR providers and recognised by peers as the leading experts in technology dispute resolution. Combined, these professionals have successfully handled thousands of mediations and arbitrations.

The Tech List is a 'go-to' list of exceptionally experienced and talented neutrals who 'get' technology and, just as importantly, understand the international technology business world. SVAMC listed mediators work intelligently to help parties reach efficient business solutions. They are skilled practitioners who are known for understanding technology as well as understanding how to facilitate settlement. SVAMC listed arbitrators rely on technology industry and technology law expertise to fully consider the parties' positions, carefully assess the facts and law and make efficient, sound and definitive decisions on the parties' dispute. Most Tech List appointees have focused their careers on technology law and have worked in technology companies. SVAMC also requires that Tech List appointees are dedicated to cost-efficient, business-practical decision-making.

By listing the world's top technology arbitrators and mediators, SVAMC offers ADR users a clear representation of the most qualified and experienced technology arbitrators and mediators. The SVAMC website provides an individual profile for each Tech List appointee describing their background, expertise and contact information. The site also includes details on each appointee's technology sector and legal practice focuses. Although many ADR providers have panels of neutrals claiming technology expertise, the Tech List is the only publicly available peer-vetted list. It serves as a reliable resource for users, counsel and ADR providers.

The 2017 Tech List includes approximately 40 practitioners, most based in the US. It is expected to grow each year, particularly as SVAMC expands internationally. It is anticipated that many of the qualified practitioners in Europe, Asia and Latin America will be added to the Tech List in the next few years.

International outreach

SVAMC created an International Task Force in 2017 to engage technology companies, law firms and arbitration/mediation providers, particularly in technology centres in Europe, Asia and Latin America, in thinking about smarter, faster and more cost-effective practices to resolve TMT business disputes. The International Task Force works in collaboration with the affiliated Global Technology Dispute Resolution Council to promote efficient technology dispute resolution.

SVAMC's International Task Force is segmented into units focused on the UK/Europe, Asia and Latin America. One of the initial projects of the International Task Force is to work with leading corporations and arbitral experts on international standards for technology dispute resolution. The Task Force welcomes participants in its geographic focus areas.

New ADR technologies

Various SVAMC members are deeply engaged in efforts to integrate technology advancements into dispute resolution and, more importantly, utilise technology to provide improved processes. SVAMC members are working to evolve online dispute resolution (ODR) technologies, such as those developed at eBay and PayPal, from the business-to-consumer sector to the business-to-business sector to handle major commercial disputes. SVAMC is planning for collaboration with university researchers to provide publicly available database profiles on individual arbitrator practices so that users have better resources in selecting neutrals.

Technology ADR thought leadership

SVAMC has begun work with leading law firms and technology companies to provide an organised forum for thought leadership on efficiencies for technology dispute resolution. SVAMC is working to assemble leading in-house and law firm practitioners to develop strategies for improving court and ADR technology dispute resolution processes, including considering judicial, legislative and private institutional improvements to better serve users.

SVAMC leadership and diversity

SVAMC is led by its board of directors and guided by its advisors and membership. Management is coordinated through the SVAMC Executive Board and various operating committees and task forces. SVAMC's leadership is composed of highly recognised technology practitioners who work collaboratively to advance SVAMC's mission of promoting ADR for technology disputes. They come from a variety of backgrounds, are diverse and work across borders to build an organisation that will serve as the voice of technology ADR. SVAMC intends to expand its leadership base more deeply into the corporate sector as it grows.

One of SVAMC's most important focuses is improving diversity in the technology ADR sector. SVAMC recognises that diversity allows for improved decision-making, and SVAMC supports diversity in the technology ADR field, in its leadership and in all its activities. SVAMC invites young and diverse practitioners to its membership, is involved in scholarly work on the subject and has a dedicated task force focused on outreach to women and other diverse practitioners. The goal is to have a broad, diverse general membership, to ensure diverse representation at the Board and leadership levels, to encourage the development of technology neutrals with diverse backgrounds to improve the quality of technology dispute resolution and expand opportunities for all.

Looking forward

In the short time since its founding, SVAMC has rapidly gained recognition as an epicentre of technology ADR. It has made a mark in the ADR world bringing industry-focused practitioners and users together. There is a growing awareness of SVAMC, its membership and opportunities for technology dispute resolution.

The SVAMC community is part of a rising tide. With each new member, new programme offering, new Tech List appointment and new outreach to users and institutions, there is a growing recognition that technology disputes can be resolved efficiently and effectively. There is an increased awareness that properly managed arbitration, mediation and other ADR processes can provide fast, reliable and efficient technology dispute resolution that spans national borders.

SVAMC is increasingly recognised by the technology sector and the ADR community as the go-to source for technology dispute resolution. SVAMC's collaborative, non-profit model allows it to bring together leading technology companies and ADR providers. SVAMC will continue reaching out to the user-community, providing quality resources and service, and expanding both geographically and in diversity. SVAMC and its membership are proud to be the leaders in dispute resolution for the global technology sector.



Gary L Benton

Silicon Valley Arbitration & Mediation Center

Gary L Benton is a US, UK and international arbitrator with expertise in international business, private investment, technology and emerging growth matters.

Gary's technology law career includes extensive experience litigating patent and other IP disputes, venture financing Silicon Valley tech startups, handling US and international M&A and IPOs, managing portfolios of international legal projects for Fortune 500 technology companies and serving as an internet cloud security company general counsel.

Gary is the founder and currently serves as the chairman of the Silicon Valley Arbitration and Mediation Center (SVAMC). He was previously a partner with the leading international law firms Coudert Brothers LLP and Pillsbury Winthrop Shaw Pittman LLP in San Francisco and Palo Alto.

He has handled hundreds of cases in his career and has substantial experience as a single, panel and presiding arbitrator. He is a member of the ICDR International Panel, the AAA Panel, the CPR Institute for Dispute Resolution Panel, the World Intellectual Property Organization (WIPO) Panel, has served on tribunals for the International Chamber of Commerce (ICC) Court of Arbitration and the Netherlands Arbitration Institute (NAI), and has served as counsel on matters before the London Court of International Arbitration (LCIA) and various Asia-based institutions and in UNCITRAL proceedings.

Gary is a fellow of the College of Commercial Arbitrators (CCA) and the Chartered Institute of Arbitrators (CIArb). He is a member of the Institute for Transnational Arbitration (ITA) Advisory Board, the International Council for Commercial Arbitration (ICCA) and other arbitral associations. He is peer-appointed to the SVAMC List of the World's Leading Technology Neutrals. In 2016, he was named by the *National Law Journal* as one of the 25 ADR Trendsetters and Visionaries in the US.

He is qualified as a US lawyer and as an English solicitor.



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