
EFFECTIVE DISPUTE RESOLUTION IN PUBLISHING INDUSTRY

Divya Arora, Christ (Deemed to be University) Delhi, NCR

ABSTRACT

The growing needs of the Alternative Dispute Resolution (ADR) methods in the publishing industry, is increasing day by day. As it is offering the world of publishing a new era for resolving the disputes, which is difficult for judiciary to negotiate such as Literature work, under Copyright Act reason being the fact that books often take on lives on their own, which is separate from both their author and their publisher. Others reasons being the publishing companies and the authors may have different interest¹. Copyright rules in various countries might clash, a publishing house may have to deal with the estate of a deceased author, and publishing technology is continually changing. All of these factors combine to result in a lot of publishing conflicts being contested in the courts, with the parties losing something in the process: personal privacy, the avoidance of negative news, relationships with other parties involved, or monetary damages. The solution may be found in ADR. ADR is an alternative dispute resolution method for reducing the burden of courts that is private, secret, and informal. They have the necessary flexibility, innovation capacity, and specificity to help prevent or overcome some of the above-mentioned problems. Publishers should regard ADR procedures as the main instrument for resolving conflicts in the publishing business as they strive to establish an efficient dispute system. This research paper illuminates the mechanism of ADR and its techniques that would help the publishing industries to resolve the disputes more effectively and with ease.

Keywords: Publishing, industry, ADR, techniques

¹ <http://moritzlaw.osu.edu/epub/mayhew-hite/2013/03/hurry-up-please-its-time-the-growing-need-for-adr-methods-in-the-publishing-industry-2/>

INTRODUCTION

Before getting into the legal aspects of publishing industry, let's first take a generic idea about what publishing industries are- a branch of culture or production, which is the activity of making or publishing information, literature, music and other content available to the public as a whole either for sale or for free. These publishing industries might be regarded as any news channels, newspapers, magazine publication etc.² Publishing is a business, and it embraces the principles of competitiveness, sales, and profit as a result. Publishers are just as concerned with their products as the writer's intellectual, creative, and cultural creations as they are with bookkeeping, marketing and advertising, shipping and distribution, and inventory control. The aspects that an author or publisher should be aware of prior publishing a book in India, there are several publishing laws in India that regulate the content of the book that is written and distributed. These laws provide certain content that can be regarded as sedition or hurting the religious sentiments which are regarded as criminal offences and for which a complaint can be filed. One of the examples is of Defamation which is both civil as well as criminal offence³.

Research shows that Publishing Disputes mostly end up in litigation, but there are many drawbacks to the litigation process as there is court's ultimate authority, the court's rule of procedure and evidence, the finality made by judges and the narrow scope of remedy provided. They are regarded to be the traditional method of resolving disputes, but now there can be an alternate for the same through the alternative dispute resolution (ADR) mechanism⁴. Negotiation, mediation, and arbitration are the most popular ADR approaches. Negotiation is a process in which the parties control the conversation and development of a mutually beneficial solution. They also have influence over the negotiating style, schedule, and location, as well as the authority to reject an outcome unless both parties agree. Autonomy and the ability to settle the issue discreetly are two advantages. Research denotes that collaborative effort is essential in one type of negotiation known as "principled" negotiation. A focus on the parties' interests, investment in choices for mutual advantage, and the use of objective criteria are all key parts of principled negotiation⁵. Mediation is a

² <https://www.encyclopedia.com/literature-and-arts/journalism-and-publishing/journalism-and-publishing/publishing-industry>

³ <https://www.obhanandassociates.com/blog/checklist-for-the-indian-publishing-sector/>

⁴ http://moritzlaw.osu.edu/epub/mayhew-hite/2013/03/hurry-up-please-its-time-the-growing-need-for-adr-methods-in-the-publishing-industry-2/#_ftn8

⁵ *ADR Spectrum*, JAMS, <http://www.jamsadr.com/adr-spectrum/#Mediative%20Processes>

process in which two or more disputing parties use the assistance of a neutral third-party to help them reach an amicable agreement. Mediation is a forward-looking rather than a backward-looking activity. The capacity to manage the outcome, a neutral third-party perspective and a higher possibility of the parties continuing a working relationship are all advantages. There are stages of mediation mechanism- (1) pre-mediation, in which the parties agree to mediate; (2) the mediator's opening presentation, in which each party explains their side of the story; (3) the parties' opening presentations, in which each party explains their side of the story; (4) mediated negotiations, in which the parties determine the issues to be discussed, identify alternatives and possibly speak individually to the mediator⁶. Finally, arbitration entails presenting a dispute to a neutral third-party for a final and binding decision, referred to as "award." While arbitration is less independent than dialogue or even mediation, one of its advantages is that it guarantees the issuance of a solution, or an award.

WHY ADR MECHANISM IS PREFERABLE OVER LITIGATION?

"The courts of this country should not be the places where the resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried." By Sandra Day O'Connor

As per the data of cases filled, Intellectual property protection problems are gradually increasing in India's legal system. Intellectual property protection is only available for a limited period and must be enforced properly for the intellectual property inventor. Alternative remedies and strategies for sharing the judicial load are required due to the large delays in the legal system. This is especially significant because the person who has been mistreated has limited rights, and the only remedy available is the one provided by substantive laws. As a means of maintaining intellectual property protection, alternative dispute resolution is becoming more common for resolving disputes.

As we know courts are a necessary institution, without them, society would be in disarray. Their significance cannot be overstated, even if many of the conflicts that emerge between individuals or organizations can be resolved without the intervention of legal authorities. Such disagreements, which do not necessitate the use of the legal system, require a specific set of formal laws to be resolved. Individual or organizational disagreements are resolved

⁶ Nancy H. Rogers and Richard A. Salem, A Student's Guide to Mediation and the Law 7-39 (1987)

through dispute resolution. As a result, the judicial burden is lessened⁷. Not only can ADR assist improve and maintain connections between the publisher and the estate after an author's death, but it can also help enhance and sustain relationships between the publisher and the estate for a long time. The indication of the rights linked to 'intellectual output' is used to value the intellectual work of intellectual property creators. Intellectual property protection allows the inventor to exercise control over third parties that try to use the benefits of his labour without his consent. If rights cannot be enforced, the justification for their establishment is negated. Intellectual property owners must act as watchdogs and seek redress in the courts if their rights are violated⁸. The Indian Courts have taken a significant step toward the formation of an intellectual property regime in India but, if alternate conflict resolution is used, the available resources could be put to better and effective use by the Indian Courts. Patent and copyright cases, which require a special adjudicating officer who can grasp the multidisciplinary nature of the matter with ease, require special adjudicating officers. The minimal protection afforded to owners of intellectual property rights necessitates the development of measures for enforcing rapid and swift justice.

In *Bajaj Auto Ltd. v. TVS Motor Company Ltd*⁹, "Experience has shown that in our nation, claims pertaining to patents, trademarks, and copyrights are lingering for many years, and litigation is mostly contested between the parties seeking interim injunction," the Supreme Court of India stated. This is an extremely unpleasant situation, and in order to serve the goals of justice, we issued the above-mentioned ruling in the above-mentioned case. We instruct that all courts and tribunals in this nation carry out the orders in the aforementioned decree in a timely and faithful manner." It is clear that, rather than promoting the progress of intellectually protected work, aggrieved parties are opting for alternative dispute resolution mechanisms for the advancement of intellectual property rights in India, due to unjustified delays in case disposition and costly litigation that could prolong the protection accorded to the work. Furthermore, the commercial nature of the transactions involved in the vast majority of intellectual property-related lawsuits necessitates such a strategy.

Giving reference to the foreign countries Alternate dispute mechanism, in publishing house disagreements, avoiding unfavorable publicity by employing ADR rather than litigation is also

⁷ <https://www.mondaq.com/arbitration-dispute-resolution/777618/comparative-analysis-of-adr-methods-with-focus-on-their-advantages-and-disadvantages>

⁸ <https://singhania.in/admin/blogimages/doc-7136177.pdf>

⁹ (2009) 9 SCC 797

crucial. Both McGraw Hill and Random House released books in 1962 about President John F. Kennedy's valour during WWII. McGraw Hill¹⁰ filed a lawsuit because the Random House book's title was too similar to its own. While both publishers were aiming to showcase the president's wartime heroics in the biographies, they were also disputing about the allowable combinations of the terms PT 109, World War II, and John F. Kennedy. "The law does not recognize a monopoly of the English language," the Supreme Court of New York declared. Arbitration, for example, may have entailed a neutral third-party versed with copyright law and unfair competition ruling on the permissibility of Random House's title without exposing the title issue to the public.

In a landmark judgment in the case of *Bawa Masala Co. v. Bawa Masala Co. Pvt. Ltd. and Anr.*¹¹ *The Delhi High Court has authorised the use of an early neutral evaluation mechanism in an intellectual property-related lawsuit case where a number of legal issues have previously been settled through alternative dispute resolution. The Court contended in this ruling that such tools for peaceful conflict settlement should be included under section 89 of the Civil Procedure Code of 1908. The Court went on to say that the early neutral evaluation procedure has "same features as a mediation process...the difference is that in mediation, solutions usually emerge from the parties, and the mediator makes an effort to find the most acceptable solution," whereas "in early neutral evaluation, the evaluator acts as a neutral person to assess the strengths and weaknesses of each of the parties."*

ADR METHODS FOR RESOLVING PUBLISHING DISPUTES

The publishing industry gives rise to a variety of disputes, even if a party wins a trial in court still it can lose an opportunity to receive royalty, the preservation of privacy or a relationship with the other party involved etc. Publishing issues are best settled via ADR methods since they are flexible, confidential, innovative, and can be adjusted to unique situations. Some of the ADR techniques of resolving the publishing disputes are as follows-

1. **PUBLISHING CONTRACTS-** The use of the publication contract itself as a means of settling publishing conflicts is one option. A well-drafted, interest-based contract can help avoid such conflicts. Furthermore, a contract's dispute resolution clause will usually lead the parties to mediation or arbitration, where both parties might try to reach

¹⁰ McGraw-Hill Book Co. v. Random House, Inc., 32 Misc. 2d 704 (N.Y. App. Div. 1962)

¹¹ AIR 2007 Delhi 284

an agreement without going to litigation right once. In fact, the best moment to settle on an acceptable manner to address future disagreements is when the parties are first negotiating a contract, because they are more likely to be cooperative and sensible before a dispute arises.

- Incorporating Interests in Publishing Contracts
- Identifying Areas of Disputes in Publishing Contracts
- ADR Clauses in Publishing Contracts

2. THE MULTI-STEP ALTERNATIVE DISPUTE RESOLUTION CLAUSE-

Including a multi-step dispute resolution clause in a contract allows parties to specify how a future conflict will be resolved and which ADR methods they want to use. A multi-step procedure included in a publishing contract would not only assist route future disagreements away from litigation and into methods chosen by the parties, but it will also be adjustable to the specific demands of a particular publishing contract, the three most common ADR methods are negotiation, mediation, and arbitration. Even if the parties haven't agreed to use these approaches, they are a viable alternative to litigation that should be considered. With negotiation, the parties would be able to freely explore and discuss their own interests. If that doesn't work, they can work together in mediation with the support of a neutral third-party. Finally, if the parties are unable to reach an agreement, they may seek the assistance of an arbitrator who will draught one for them. In this method, the parties will be able to resolve their issue confidentially, without causing any negative publicity or violation of privacy, while still keeping their connections and interests.

CONCLUSION

The basis of this research paper was to recognize the usefulness of ADR mechanism for resolving disputes in publishing industry. ADR methods are very flexible and can easily curtail a particular dispute as well as can preserve the parties' relationship and rights. And as already stated, ADR methods are private, and they can easily be kept confidential to avoid the unwanted publicity. Publishing is full with complex challenges and controversies, partly because to the industry's diverse nature, and partly due to the fact that literature and like other forms of art are a tough subject for the judiciary to regulate. As a result, when publishing businesses develop dispute resolution systems, they should look to the vast array of dispute settlement options that

ADR methods provide. ADR procedures are the greatest conflict resolution instrument for the publishing sector because of all of their benefits.