Using Information Technology Efficiently in International Arbitration

Erik Schäfer (Attorney at Law, Düsseldorf)

„What is the main purpose of thinking?

The main purpose of thinking is to abolish thinking. The mind works to make sense out of confusion and uncertainty. The mind works to recognize familiar patterns in the outside world. As soon as such pattern is recognized the mind switches into it and follows it along – further thinking is unnecessary.“ *(p. 35)*

„The natural tendency of thinking is to support a view arrived at by other means.“ *(p. 21)*

Edward de Bono „de Bono‘s Thinking Course“ 1933 (rev. ed. 1994)

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I. Introduction – Issues to be addressed

II. How is IT used in international arbitration?

III. How could IT be used more efficiently

- in the short term?
- in a more distant future?

IV. Conclusion

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II. How is IT used in international arbitration?

(1) IT has not fundamentally changed the workflow and processes in international arbitration that follows the traditional adversarial approach.

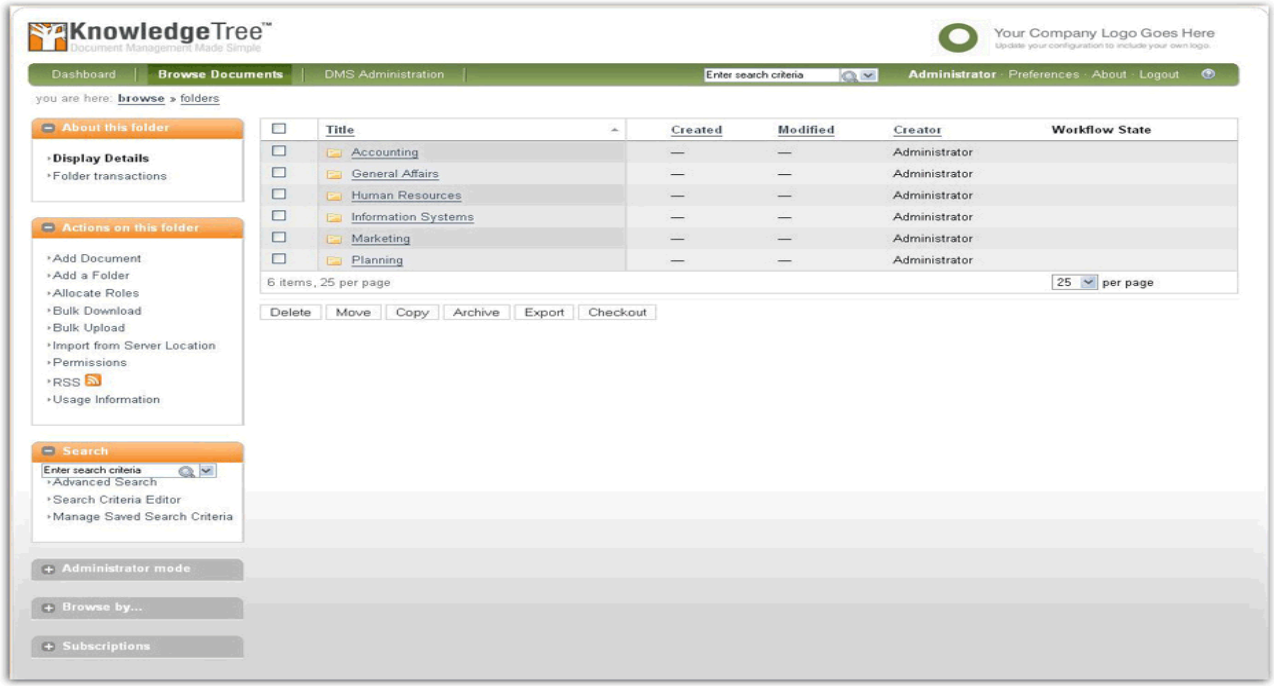
(2) IT has largely replaced older methods of transmission and data storage, but counsel and arbitrators mainly rely on printed documents during their work and hearings.

(3) IT has added complexity since more paper can be produced with less effort and disclosure of electronic data has become an issue.

(4) IT increasingly shows its potential trough the availability of online filing cabinets / data repositories with full text search facilities and group calendar functions.

WIPO, AAA, and ICC offer hosting services with such filing cabinets. The presently most sophisticated one is ICC NetCase.

Online data repositories are also available in law firms or made available by service providers. Those, who want to test evaluate an online repository before using one or setting it up may try the open source software KnowledgeTree (www.knowledgetree.com) which possesses all typical features except for the group calendar.



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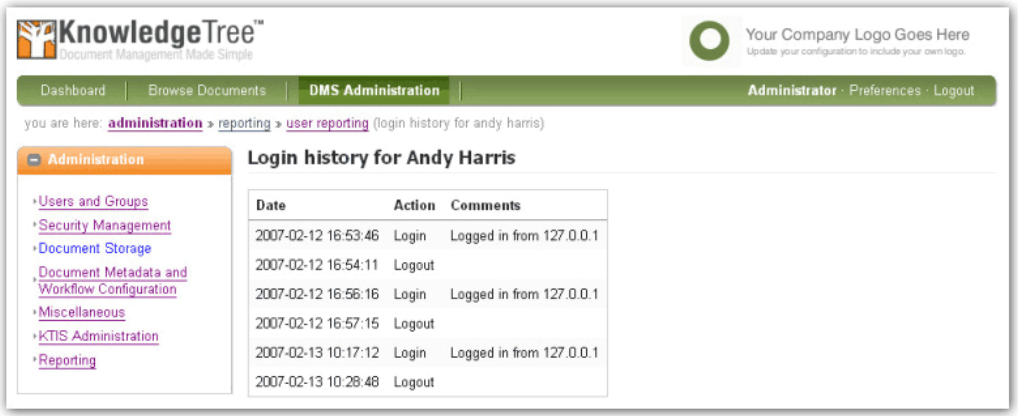
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Document Management Made Simple
Your Company Logo Goes Here
Update your configuration to include your own logo.
Dashboard
Browse Documents
DMS Administration
Administrator · Preferences · Logout
you are here: administration » reporting » user reporting (login history for andy harris)
Administration
Users and Groups
Security Management
Document Storage
Document Metadata and Workflow Configuration
Miscellaneous
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Login
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2007-02-12 16:54:11
Logout
2007-02-12 16:56:16
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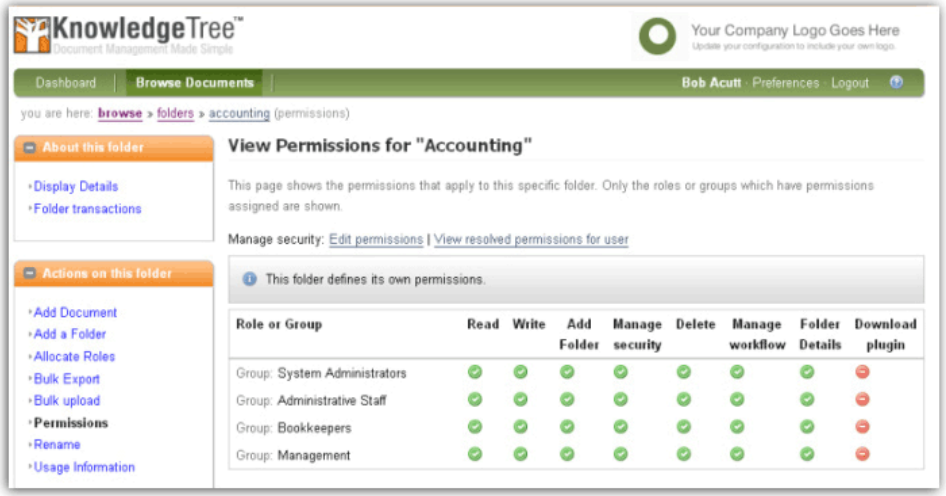
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Dashboard
Browse Documents
Bob Acutt · Preferences · Logout
you are here: browse » folders » accounting (permissions)
About this folder
Display Details
Folder transactions
Actions on this folder
Add Document
Add a Folder
Allocate Roles
Bulk Export
Bulk upload
Permissions
Rename
Usage Information
View Permissions for "Accounting"
This page shows the permissions that apply to this specific folder. Only the roles or groups which have permissions assigned are shown.
Manage security: Edit permissions | View resolved permissions for user
This folder defines its own permissions.
Role or Group
Read
Write
Add Folder
Manage security
Delete
Manage workflow
Folder Details
Download plugin
Group: System Administrators
Group: Administrative Staff
Group: Bookkeepers
Group: Management


Advanced Query
GeneralText contains "contract" and
IsCheckedOut = "True" and
CheckedOut <= "2007-01-01"
Search
Parse
Reset
Clear
Grammar
Expressions may be built up using the following grammar:
expr ::= expr { AND | OR } expr
expr ::= NOT expr
expr ::= (expr)
expr ::= expr { < | <= | = | > | >= | CONTAINS |STARTS WITH | ENDS WITH } value
expr ::= field BETWEEN value AND value
expr ::= field DOES [NOT] CONTAIN value
expr ::= field IS [NOT] LIKE value
value ::= "search text here"
Fields
The following fields may be used in expressions:
CheckedOut , CheckedOutBy , CheckedoutDelta , Created , CreatedBy , CreatedDelta , DiscussionText , DocumentId ,
DocumentText , DocumentType , Filename , Filesize , Folder , GeneralText , IsCheckedOut , IsImmutable ,
Metadata , MimeType , Modified , ModifiedBy , ModifiedDelta , Tag , Title , Workflow ,
WorkflowID , WorkflowState , WorkflowStateID

(5) Critical issues relating to using IT in international arbitration tend less to be of a legal and more of a practical nature.

(6) The following factors tend – in my view - to be the cause:

(a) Counsel, who understand the procedure, want to sit in the driver's seat without being bothered with technical detail. Support staff understand technology but not the procedure. Since communication is from top downwards potential new or better uses of IT are not identified.

(b) Even a big screen displaying many documents will not offer the ‚creative chaos' on an attorneys desk when working on a file. The cause are technical constraints and the fact that software is developed by software engineers and not the users.

(c) Cultural or age depending differences in attitude towards IT.

(d) The unavailability of adequate IT resources.

(7) While - due to the predominance of the PDF format - file format or compatibility issues rarely arise an apparently small but significant issue is that players in international arbitration do not use from the beginning a meaningful and coherent file naming system as is required by the other party and the arbitrators to easily organize and retrieve files.

(8) Another small but significant problem is that more than one ‘real world’ document are being packed into one PDF file. However, the other party and the arbitrators need separate files to easily organize and retrieve documents.

III.1) How could IT be used more efficiently in the short term?

(1) Efficiency can be enhanced by moving from using e-mail with attachments as substitute for facsimile transmission to online repositories hosted by a trusted third party. This allows arbitrators and counsel to access the file any time anywhere including during witness examination at hearings.

(2) Efficiency can be enhanced by reducing redundant data capture, e.g. by ‚filing' any digital copy of documentary or other evidence only once.

(3) Standard Meta data such as author, addressees, and date of the original document could also be shared whereby the need of multiple creation of such data could become superfluous.

(4) Using qualified electronic signatures can resolve certain data integrity issues and replace the requirement of submitting 'hand made' signatures with certain 'real' documents. However, this will not be applicable to arbitral awards in the near future.

III.2) How could IT be used more efficiently in a more distant future?

(1) Fair and just international arbitration proceedings do not require copying in whole or in part any national civil procedure. In many respects they have never done so, even if most players carry the municipal procedural baggage with them at all times.

(2) Subject to known minimum standards parties and arbitrators can agree on new methods and procedures they deem fit.

(3) IT offers and further develops tools which make using new and - eventually - more efficient approaches simpler.

(4) It is most likely that any such approach will require more collaboration than would be expected from the adversarial perspective.

(6) One such approach could be labeled ‚Collaborative Case Management‘ (CCM).

(7) CCM would rely on an online repository with its relational database. Superposed would be a software module with a graphical interface allowing to visually organize information in a way we know from decision trees, flow charts, or mind-maps.

(8) When the case begins, the arbitrators would, in consultation with the parties, draw up a decision tree or mind map with the claims and the issues being relevant for deciding on a claim. This visual representation could be further refined or changed during the process.

(9) The parties would add their legal and factual arguments and any piece of supporting evidence to each issue by establishing logical links (e.g. in the relational database) to the corresponding element in the decision tree or mind map.

(10) Properly done this would allow to see from the beginning which bits of information are relevant or not.

(11) Properly done this would also allow to more easily weigh the relevance of certain contentious issues.

(12) Finally, a good decision tree and the identification of relevant disputed issues can help to avoid flaws in the analysis and streamline the procedure.

(13) However, all this results in more transparency, especially insofar as the thoughts of the arbitrators are concerned. A party reckoning early on that its position may not prevail may be tempted to abandon and thereby frustrate the cooperative approach. This risk should better not be underestimated.

IV. Conclusion

More efficient use of IT in international arbitration will require even better software solutions that have user interfaces and work-flows which anticipate the working habits of counsel and arbitrators.

However, more efficient use of IT will also require a better understanding and willingness to understand what IT is capable of as a tool.

Last, but certainly not least, a more efficient use of IT will depend on our willingness to question our habits and work methods.

The adversarial system in all its different mutations has stood the test of time, but IT may help to change to a more collaborative approach in certain areas.

In my opinion such a collaborative approach will increase efficiency and quality, without – if used intelligently - exposing the principles of fair and just proceedings.

Thank you for your attention!

Erik Schäfer
Attorney at Law (Germany)
COHAUSZ & FLORACK
Bleichstrasse 14
D-40211 Duesseldorf

eschaefer@cohausz-florack.de
www.cohausz-florack.de
Tel.: +49 (0) 211 90490-0
Fax.: +49 (0) 211 90490-49

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