

ADRoIT Principles

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Introduction

The "ADRoIT Principles" are a set of fundamental principles which, if followed, will help minimise the probability that disputes will arise, and, should disputes arise, assist in the rapid and efficient resolution of the disputes. Each Principle has an associated set of Best Practices which can be used as a guide to implementing the ADRoIT Principles.

There are 7 "ADRoIT Principles":

1. An organisation must have attained an Organisational Dispute Management Competency of at least 3 or 4.
2. Organisations must have a Relationship Management process/programme in place prior to any contract.
3. Must follow a suitable Project Management Methodology.
4. An organisation's contracts must conform to the ADRoIT Contract Recommendations.
5. An organisation's contracts must incorporate a Dispute Review Board or other proactive dispute avoidance technique.

6. The Business Case must be reflected in the Specifications of an organisation's procurement contracts, and there must be a policy for realising the benefits of the project.
7. There must be an independent Chairperson of any Project Steering Committee.

At what stages of an IT Project do the ADRoIT Principles apply?

ADRoIT Principles operate at four main stages of any business project: first, at the incipient stage when the project is being formulated; secondly at the contract formation stage; thirdly at the contract implementation phase; and fourthly in the event a dispute arises.

At the stage of project formulation, ADRoIT requires that the risk of the business case not being realised is the subject of a rigorous sensitivity analysis both in terms of the assumptions which underlie the business case as well as taking into account external factors that could affect the chances of the business case being delivered. The identified risks are then to be managed and avoided to the maximum extent possible in the structure, objectives and processes of the project.

At the engagement stage ADRoIT requires a thorough understanding of both the business case and the technology, to ensure that the contract deliverable is the business case mapped to the specified hardware, software, functionality and service level requirements. In other words the specification that the supplier has to meet needs to be objectively verified as the means by which the business case will be delivered.

At the project implementation stage, ADRoIT requires that a disciplined change control regime is in place so that the goal posts don't move and that scope creep doesn't infect a project. Most importantly, it requires an independent neutral to chair any Project Steering Committee to ensure that cosiness between a supplier and a customer doesn't compromise the discipline and integrity of the contractual milestones. It also ensures early warning signs of project failure are intercepted at the incipient stage, thus creating an opportunity to abort the project before scarce funds are consumed unproductively.

Dispute Phase

If things still go wrong, ADRoIT Principles require a dispute resolution methodology that exhaustively explores all options

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that could salvage the business case (and participant relationships) before burning them with litigation. They ensure that escalation procedures are efficient and effective in meetings between participants' management, and in sensible and commercially orientated attempts to negotiate a resolution using a mediator with subject matter expertise (who can maximise the chances of finding a durable solution that delivers the business case and preserves relationships). At this stage options worth exploring, after meetings between senior management of all parties, include mediation, neutral evaluation, mini trial, expert determination and conciliation.

All have their pros and cons but, importantly, they all share the benefits of ADR that are lost in litigation: fairness, process efficiency, cost, speed, confidentiality and relationship preservation.

Organisations need to develop both a dispute avoidance policy *and* a dispute resolution policy. Whilst some have a dispute resolution policy, almost none have a dispute avoidance policy. This is remarkable given that intercepting disputes before they can develop offers massive savings in time and effort and, of course, cash-sapping wheel spinning.

Often the engagement of a neutral expert in the early stages of a project will ensure that the contract deliverable is the business case, that the board has early warning if a project is departing from spec, and that every opportunity to salvage the business case is taken before resort to arbitration or litigation.

Furthermore, when strategic objectives and competitive advantage are involved, the confidentiality that applies in ADR processes offers the ability to deal with disputes without jeopardising the competitive edge of the underlying strategy.

Discovery in Court Proceedings of YouTube's Logging Database: Viacom Inc v YouTube Inc and Google Inc (United States District Court, 1 July 2008)

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Introduction

On 1 July 2008 YouTube Inc ("YouTube") and Google Inc ("Google"), which owns YouTube, were ordered by a judge in the United States¹ to produce to Viacom Inc ("Viacom") its logging database for all views of videos on YouTube's website including views via all embedded links on third-party websites.² The logging database includes the unique log-in identification (user name), date and time of each view and the IP address of the viewer. The ruling immediately provoked widespread public debate.

Background

In March 2007 Viacom and other producers of videos, films, music, television programs and the like commenced proceedings against YouTube and Google seeking US\$1b for breach of copyright. Viacom's³ claim referred to the ready copying and distribution of and access to digital copyright works over broadband, wireless and other networks. Viacom complained that although YouTube was ostensibly a site where user-generated content could be shared YouTube authorised users to download copyright works without

authorisation from the owner of the copyright. Viacom alleged that YouTube was vicariously liable for copyright infringement by its users. Viacom claimed that it suffered irreparable harm and that it was entitled to a permanent injunction and damages. YouTube and Google relied on the Safe Harbour provisions of the Digital Millennium Copyright Act and contended that the impugned videos might be used pursuant to express or implied licences granted by Viacom, the doctrine of fair use, the doctrine of copyright abuse, substantial non-infringing use as well as numerous equitable defences