

■ The WIPO Mediation Pledge for IP and Technology Disputes:

Why consider mediation for IP- and tech-related disputes?

In this webinar

- Send your questions
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World Intellectual Property Organization (WIPO)



World Intellectual Property Organization (WIPO)

- Promotes innovation and creativity
- For the economic, social and cultural development of all countries
- Through a balanced and effective international IP system
- WIPO provides IP services that encourage individuals and businesses to innovate and create
 - Alternative Dispute Resolution (ADR) services to reduce the impact of disputes on innovation and creative processes

WIPO Arbitration and Mediation Center

- Facilitates the resolution of commercial disputes between private parties involving IP and technology, through procedures other than court litigation, including mediation and arbitration
 - Offices in Geneva and Singapore
 - Users around the world
- ADR provider specialized in IP disputes
 - WIPO mediators, arbitrators and experts experienced in IP and technology - able to deliver informed results efficiently
- International neutrality



What is mediation?

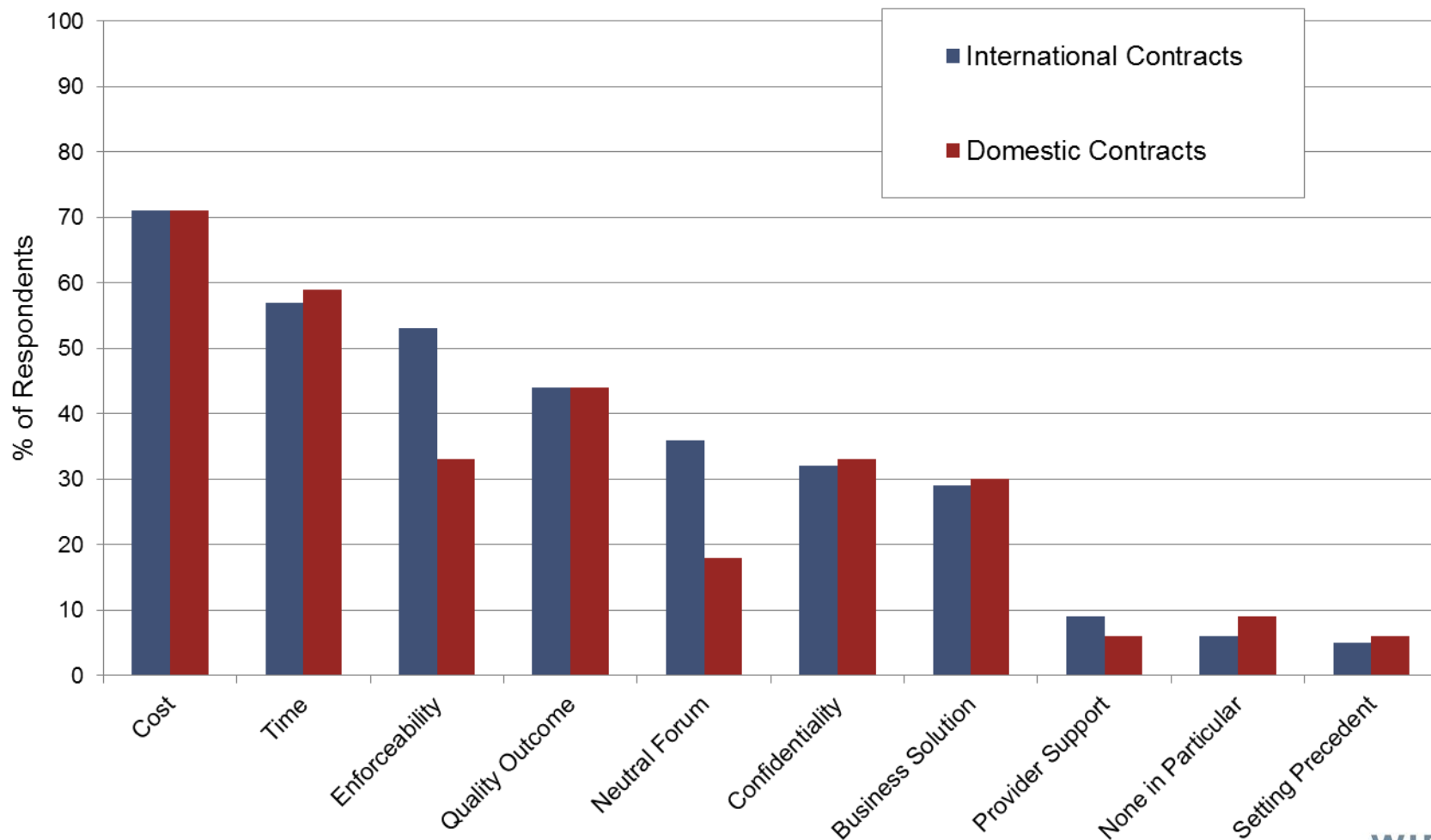
- Informal consensual process
- Neutral intermediary – mediator
 - assists parties in reaching settlement of their dispute
 - based on parties' respective interests
 - cannot impose a decision
- Settlement agreement has force of a contract
- Leaves open court or arbitration options



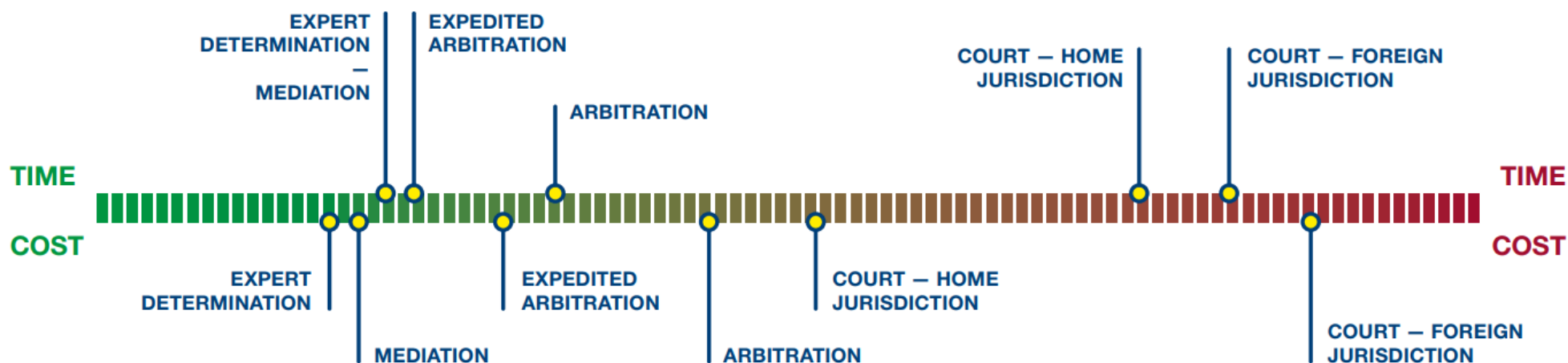
Typical steps in a mediation

- Process conducted as agreed by the parties and the mediator
- Commencement
 - Joint or unilateral
- Appointment of the mediator
 - Initial contacts between the mediator and the parties
 - Set up first meeting
 - Agree on preliminary exchange of documents, if any
- First and subsequent meetings
 - Agree on ground rules of the process
 - Gather information and identify issues
 - Explore the interests of the parties
 - Develop options for settlement
 - Evaluate options
- Conclusion
 - Agreement / Termination

What are your IP and technology dispute resolution priorities?



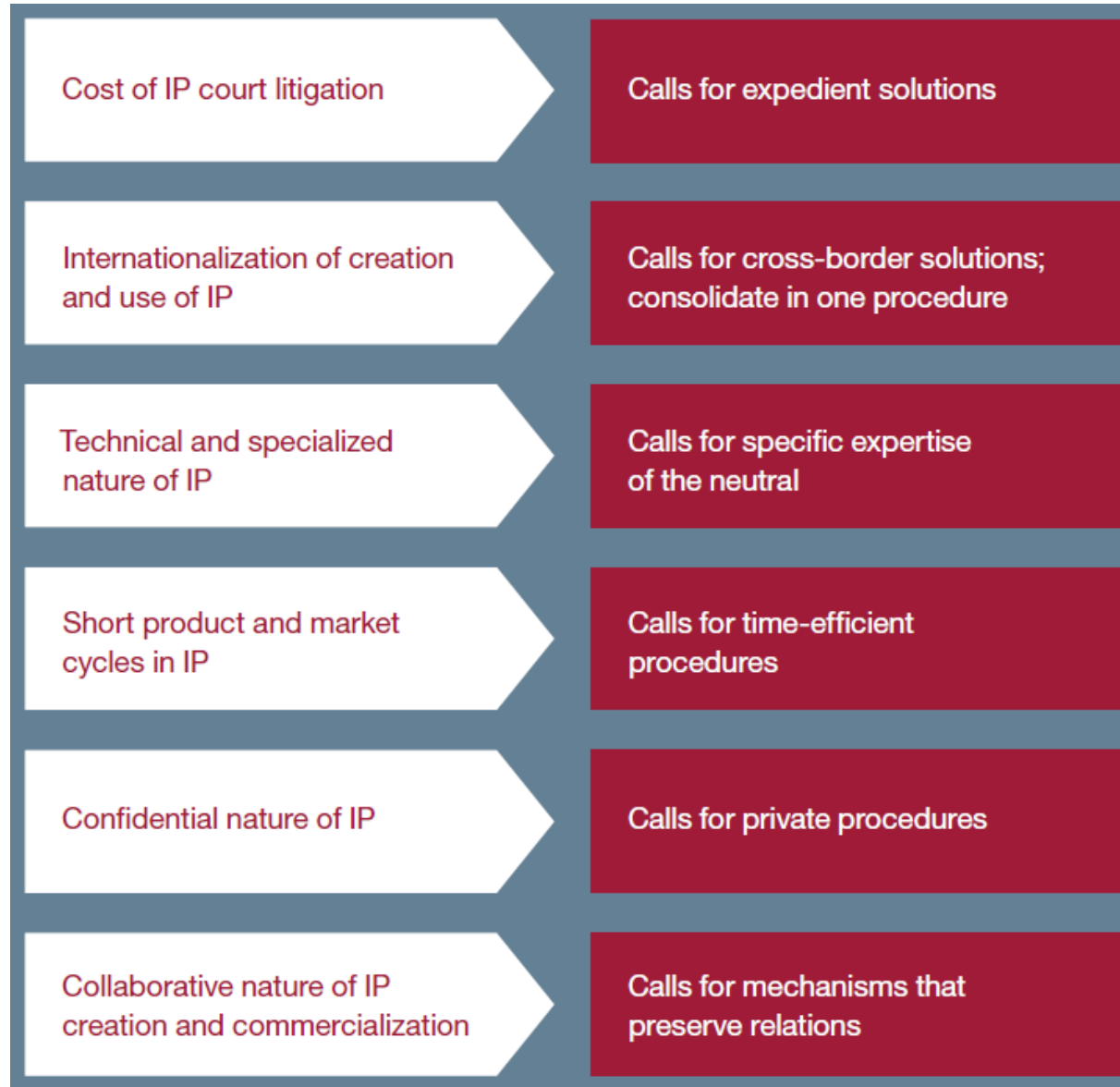
Time and cost of dispute resolution options



Pre-empting and Resolving Technology, Media and Telecoms Disputes

- 75% of organizations surveyed have a dispute resolution policy
- Mediation is the most encouraged mechanism, followed by arbitration

Why mediation for IP and technology disputes?



Mediation developments

- Growing acceptance; increased number of cases
- Corporate dispute policies and pledges
- Use of multi-tiered dispute resolution clause (e.g., mediation + arbitration, mediation + court litigation)
- Use of technology (e.g., videoconferencing facilities, online case administration – WIPO eADR)
- United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation)
 - Facilitates enforcement of mediated settlement agreements across borders
 - Businesses benefit from mediation as an additional dispute resolution option to litigation and arbitration
- National legislative efforts on mediation
- IP and Copyright Offices
 - Mediation incentives, promotion schemes

ADR for IP and Copyright Offices

- National Institute of Industrial Property of **Argentina** (INPI)
- **IP Australia**
- National Center of Intellectual Property of **Belarus** (NCIP)
- **Brazilian** National Institute of Industrial Property (INPI-BR)
- National Institute of Industrial Property of **Chile** (INAPI)
- National Intellectual Property Administration of the **People's Republic of China** (CNIPA)
- National Directorate of Copyright of **Colombia** (DNDA)
- National Register of **Costa Rica**
- **Cuban** Industrial Property Office (OCPI)
- National Copyright Office of the **Dominican Republic** (ONDA)
- **Eurasian** Patent Organization (EAPO)
- National Service of Intellectual Rights of **Ecuador** (SENADI)
- National Center of Registries of **El Salvador** (CNR)
- **Hungarian** Intellectual Property Office (HIPO)
- Directorate General of Intellectual Property of **Indonesia** (DGIP)
- **Israel** Patent Office
- Ministry of Justice of the **Republic of Kazakhstan**
- **Kenya** Copyright Board (KECOBO)
- State Service of Intellectual Property and Innovation under the Government of the **Kyrgyz Republic** (Kyrgyzpatent)
- Ministry of Culture of the Republic of **Lithuania**
- **Mexican** Institute of Industrial Property (IMPI Mexico)
- **Moroccan** Office of Industrial and Commercial Property (OMPIC)
- National Directorate of Intellectual Property of **Paraguay** (DINAPI)
- Intellectual Property Office of the **Philippines** (IPOP HL)
- Patent Office of the Republic of **Poland** (PPO)
- Ministry of Culture, Sports and Tourism of the **Republic of Korea** (MCST)
- **Korea** Intellectual Property Office (KIPO)
- **Romanian** Copyright Office (ORDA)
- Federal Service for Intellectual Property of the **Russian Federation** (ROSPATENT)
- Intellectual Property Office of the **Republic of Serbia**
- Intellectual Property Office of **Singapore** (IPOS)
- **Spanish** Patent and Trademark Office (OEPM)
- **Swiss** Federal Institute of Intellectual Property (IPI)
- Intellectual Property Office of **Trinidad and Tobago**
- Ministry of Economic Development and Trade of **Ukraine** (MEDT)
- Intellectual Property Office of the **United Kingdom**
- Copyright Society of **Tanzania** (COSOTA)
- **United States** Patent and Trademark Office (USPTO)

WIPO Guide on Alternative Dispute Resolution (ADR) Options for Intellectual Property Offices and Courts

2018

With the financial support of the Korean Intellectual Property Office



ADR for IP and Copyright Offices

- Mediation in trademark opposition procedures
 - e.g., Philippines, Poland, Singapore

- Mediation for copyright disputes
 - e.g., Colombia, Dominican Republic, Mexico, Republic of Korea, Tanzania

WIPO Mediation Rules

- Applicable to all commercial disputes
- IP-specific elements
 - e.g., confidentiality
- Flexibility
 - Pre-structure entire proceeding
 - Can be modified by arrangement between mediator and parties
- For domestic and international disputes
- 70% settlement rate in WIPO mediations

**WIPO Mediation,
Arbitration,
Expedited Arbitration
and Expert
Determination Rules
and Clauses**

How can you use WIPO Mediation?

For what kind of disputes?

How to refer disputes to WIPO Mediation

For contractual disputes

Inclusion of mediation contract clause

For non-contractual disputes (e.g., IP infringement) / For disputes pending in national courts


Mediation submission agreement by all parties /
Unilateral request by one party

- WIPO model clauses: www.wipo.int/amc/en/clauses
- WIPO Clause Generator: www.wipo.int/amc-apps/clause-generator

Clause example for your contract: WIPO Mediation

Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, **shall be submitted to mediation in accordance with the WIPO Mediation Rules**. The place of mediation shall be **[specify place]**. The language to be used in the mediation shall be **[specify language]**.

Unilateral Request for WIPO Mediation (Article 4, WIPO Mediation Rules)



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Request for WIPO Mediation
(Article 4 of the WIPO Mediation Rules)

Note: The requesting party shall complete sections 1 and 2(a). The other party shall complete section 2(b).

1. Parties

Please provide the following contact information:

Requesting Party	Other Party
Name:	Name:
Country of domicile:	Country of domicile:
Tel:	Tel:
E-mail:	E-mail:
Address:	Address:
Represented by:	Represented by:
Tel:	Tel:
E-mail:	E-mail:
Address:	Address:

2. Dispute

Please provide a brief description of the dispute:

a) The requesting party agrees to submit the above-described dispute to mediation in accordance with the WIPO Mediation Rules.

Please sign this form and submit it to arbiter.mail@wipo.int and to the other party.

Place and Date: _____

Signature: _____

b) The other party agrees to submit the above-described dispute to mediation in accordance with the WIPO Mediation Rules.

Please sign this form and submit it to arbiter.mail@wipo.int and to the requesting party.

Place and Date: _____

Signature: _____

WIPO mediation case examples

- Contractual disputes
 - Software licensing agreement; payment of royalties
 - Exclusive trademark licensing agreement for sponsorship
 - R&D collaboration
 - Pharmaceutical licensing agreement
 - Agreement for development of mobile application
 - Copyright license regarding publication of a technical publication
 - Licensing of telecom patents
 - Distribution agreement for luxury products
 - Agreement for development of e-commerce platform

WIPO mediation case examples

- Non-contractual disputes
 - Trademark co-existence to avoid confusion of similar trademarks and to regulate future use
 - Allegation of copy of TV format
 - Longstanding cross-border commercial and IP dispute; oppositions to trademark application
 - Allegation that patents used in manufactured item infringed requestor's patent rights

- Referral of cases pending in national courts
 - Breach of contract arising from collaboration agreement for development of human antibody for treatment of major disease
 - Allegation of trademark infringement
 - Patent litigation
 - Allegation of copyright infringement and breach of confidence
 - Software development dispute

More on WIPO Mediation

■ Guide to WIPO Mediation

www.wipo.int/edocs/pubdocs/en/wipo_pub_449_2018.pdf

■ WIPO Mediation Rules

www.wipo.int/amc/en/mediation/rules

■ WIPO Mediation case examples

www.wipo.int/amc/en/mediation/case-example.html

■ General information on mediation

www.wipo.int/amc/en/mediation

Guide to WIPO Mediation



The WIPO Mediation Pledge for IP and technology disputes

- WIPO initiative to promote mediation for IP and tech disputes
 - Research shows time and cost and the preservation of business relationships as parties' principal concerns in IP and technology disputes
 - Mediation cases submitted to WIPO have shown the tangible benefits of mediation for IP and technology disputes in practice
 - Mediation may still be unfamiliar to many potential users

What does it mean to sign the WIPO Mediation Pledge?

- Signing the Pledge shows willingness to consider mediation in IP and technology disputes

- The Pledge promotes increased consideration:
 - of the inclusion of mediation clauses in contracts
 - of using mediation in the absence of such clauses (e.g., for non-contractual disputes)

- The Pledge creates positive conditions for IP dispute resolution but:
 - it is not a binding commitment and does not create legally enforceable rights or obligations
 - mediation may not be suitable to every dispute and in any event does not limit a party's other dispute resolution options, including court litigation

WIPO Mediation Pledge collaborating entities



Argentine Association of Industrial Property Agents (AAAPI)



Association Suisse de l'Arbitrage
Schweiz. Vereinigung für Schiedsgerichtsbarkeit
Associazione Svizzera per l'Arbitrato
Swiss Arbitration Association

ASA – Swiss Arbitration Association



Chartered Institute of Arbitrators (CIArb)



The Copyright Society of Tanzania (COSOTA)



European Communities Trade Mark Association (ECTA)



Federal Service for Intellectual Property of the Russian Federation (ROSPATENT)



Intellectual Property Office is an operating name of the Patent Office
Intellectual Property Office (United Kingdom)



The Intellectual Property Office of the Republic of Serbia

Intellectual Property Office of the Republic of Serbia



INTELLECTUAL PROPERTY OFFICE OF SINGAPORE

Intellectual Property Office of Singapore (IPOS)



Intellectual Property Office (Trinidad and Tobago)



International Federation of Inventors' Associations (IFIA)



International IP Commercialization Council (IIPCC)



Kenya Copyright Board (KECOBO)



LICENSING EXECUTIVES SOCIETY SINGAPORE

Licensing Executives Society (Singapore)



Ministry of Culture, Sports and Tourism

Ministry of Culture, Sports and Tourism (MCST) (Republic of Korea)



Ministry of Economic Development and Trade of Ukraine

WIPO Mediation Pledge collaborating entities



National Center of Registries (CNR) (El Salvador)



National Copyright Office of the Dominican Republic (ONDA)



National Directorate of Copyright (DNDA) (Colombia)



National Institute of Copyright (INDAUTOR) (Mexico)



National Institute of Industrial Property (INPI) (Argentina)



National Institute of Industrial Property (INAPI) (Chile)

SERVICIO NACIONAL DE DERECHOS INTELECTUALES

National Service of Intellectual Rights (SENADI) (Ecuador)



Romanian Copyright Office (ORDA)



School of International Arbitration

School of International Arbitration, Queen Mary University of London (SIA)



Silicon Valley Arbitration & Mediation Center (SVAMC)



Spanish Entertainment Law Association (DENAE)



Spanish Patent and Trademark Office (OEPM)

WIPO Mediation Pledge for IP and Technology Disputes

The World Intellectual Property Organization (WIPO) through its Arbitration and Mediation Center contributes to awareness of alternative dispute resolution (ADR) options for resolving IP and technology disputes.

Without binding parties, the WIPO Mediation Pledge for IP and Technology Disputes seeks to encourage the use of mediation to reduce the impact of disputes in innovation and creative processes.

As a signatory of this Pledge, we recognize that mediation may offer a more collaborative, time- and cost-efficient manner of resolving commercial disputes related to IP and technology than court litigation.

In light of this, to the extent we consider this appropriate:

Companies, Universities, R&D Centers, and Individuals

- We are prepared to explore the inclusion of mediation clauses in contracts and agreements we are party to;
- In the absence of such clauses, we are prepared to explore the resolution of existing disputes through mediation.

Lawyers and Law Firms

So that clients can make informed choices:

- We are prepared to explore with clients the inclusion of mediation clauses in contracts and agreements they are party to;
- In the absence of such clauses, we are prepared to explore with clients the resolution of existing disputes through mediation.



**400+ signatories from
90+ countries**



Join the Pledge!

www.wipo.int/amc/en/mediation/join.html

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and Mediation
Center

In this webinar

- What is mediation?
- Why mediation for IP and technology disputes?
- The WIPO Mediation Pledge for IP and technology disputes

Contact us

- Queries: arbiter.mail@wipo.int
- Further information: www.wipo.int/amc

- WIPO Arbitration and Mediation Center Offices
 - Geneva, Switzerland
 - Singapore, Singapore

- WIPO External Offices
 - Algiers, Algeria
 - Rio de Janeiro, Brazil
 - Beijing, China
 - Tokyo, Japan
 - Moscow, Russia
 - Singapore, Singapore