

# Resolving IP and Technology Disputes Through WIPO ADR

Getting back to business



**WIPO | ADR**

Arbitration  
and Mediation  
Center

Intellectual property (IP) is a central component of today's knowledge economy, and its efficient exploitation is of growing importance to successful business. However, disputes can interfere with IP rights, at times even sterilizing the basic assets of an enterprise.

While the careful drafting of contracts will reduce their frequency, disputes will at times arise. Therefore, it is essential that they be managed and resolved efficiently. In order to do so, parties must be familiar with their dispute resolution options.

Although an IP dispute can be resolved through court litigation, parties are, with increasing frequency, submitting disputes to mediation, arbitration or other alternative dispute resolution (ADR) procedures.

ADR is appropriate for most IP disputes, and especially between parties from different jurisdictions.

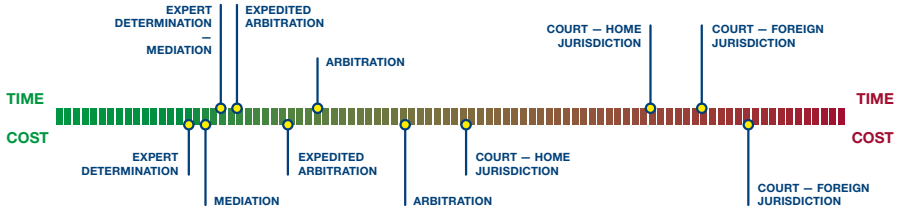
ADR can empower the parties by enhancing their control over the dispute resolution process.

If well managed, ADR can save time and money. In addition, its consensual nature often results in a less adversarial process, allowing the parties to begin, continue, or enhance profitable business relationships with each other.

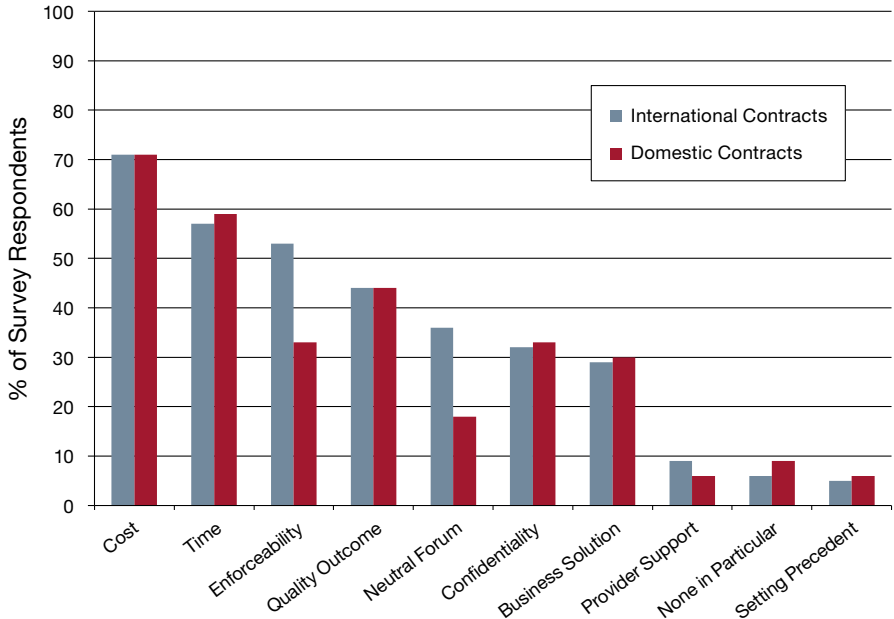
# Court Litigation vs ADR

	Court Litigation	Arbitration	Mediation
Party agreement needed to initiate	✗	✓	✓
Parties can select specialized neutral	✗	✓	✓
Neutral is a decision maker	✓	✓	✗
Confidential	✗	✓	✓
Efficient for international disputes	✗	✓	✓
Parties can shape proceedings	✗	✓	✓
Possibility of appeal	✓	limited	n.a.
International enforcement of outcome	limited	✓	n.a.

# IP Dispute Resolution

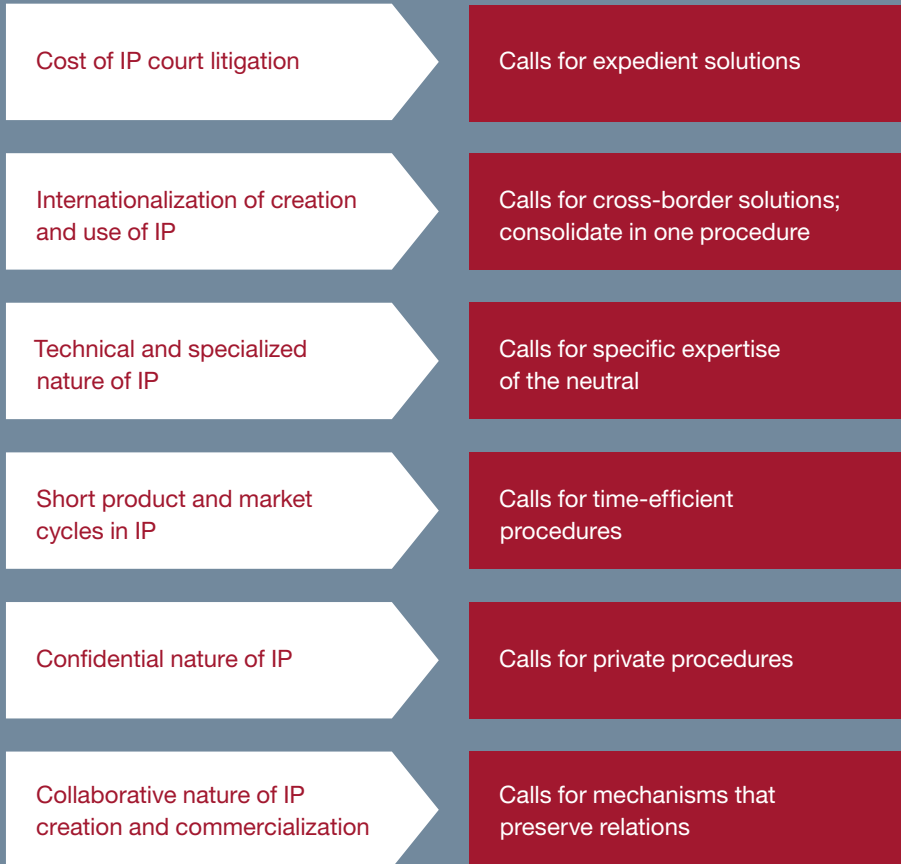


## Top Ten Priorities in Choice of Dispute Resolution Clause



Source of graphs: WIPO International Survey on Dispute Resolution in Technology Transactions

# Why Consider IP ADR



# WIPO Arbitration and Mediation Center

With offices in **Geneva**, Switzerland and in **Singapore**, the World Intellectual Property Organization Arbitration and Mediation Center offers **ADR** options, such as **mediation** and **arbitration**, to enable private parties to efficiently settle their **domestic or cross-border commercial disputes**. The WIPO Center is **international** and **specialized in IP and technology disputes**. It has a strong focus on **controlling the time and cost of its proceedings**.

## WIPO Rules and Neutrals

WIPO Mediation, Arbitration, Expedited Arbitration and Expert Determination Rules are **generally suitable for all commercial disputes**, and additionally feature provisions to address **specific needs in IP disputes**, such as provisions on **confidentiality** and **technical evidence**. Parties can draw upon an extensive database of **international independent WIPO arbitrators, mediators and experts, skilled in IP and ADR**.

Photo: WIPO



WIPO Headquarters in Geneva, Switzerland



Photo: Maxwell Chambers

WIPO Center's offices at Maxwell Chambers in Singapore

# WIPO Cases

## Types of Disputes

### Trademarks

Coexistence  
Infringements  
Licenses  
Oppositions  
Revocations

### Patents

Cross-licensing  
Infringements  
Licenses  
Ownership  
Patent Pools  
R&D / Tech Transfer  
Royalty Payment

### Commercial

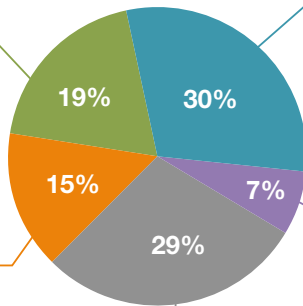
Distribution  
Energy  
Franchising  
Marketing  
Sports

### Copyright

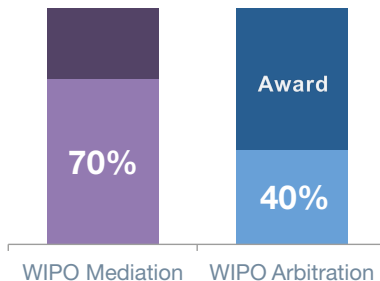
Art  
Broadcasting  
Entertainment  
Film and Media  
Infringements  
TV Formats

### ICT

Mobile Apps  
Outsourcing  
Systems Integration  
Software Development  
Software Licensing  
Telecommunications



## Settlement Rates



# WIPO ADR Options

## Mediation

An **informal consensual** process in which a neutral intermediary, the **mediator**, **assists** the parties in reaching a **settlement** of their dispute, based on the parties' respective **interests**.

The mediator **cannot impose a decision**. The settlement agreement has **force of contract**.

In the absence of a mediation agreement, a party that wishes to propose submitting a dispute to WIPO Mediation may submit a **unilateral request** to the WIPO Center and the other party.

Mediation leaves open available court or agreed arbitration options.

## Arbitration

A **consensual** procedure in which the parties submit their dispute to one or more chosen arbitrators, for a **binding and final decision (award)** based on the parties' respective **rights and obligations** and **enforceable under arbitral law**.

As a private alternative, arbitration normally **forecloses court options**.



## Expedited Arbitration

An arbitration procedure that is carried out in a **short time** and at a **reduced cost**.

The arbitral tribunal shall normally consist of a **sole arbitrator**.

## Expert Determination

A **consensual** procedure in which the parties submit a **specific matter** (e.g., a technical question) to one or more experts who **make a determination** on the matter.

The parties can agree for such outcome to be **binding**.

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## Domain Names

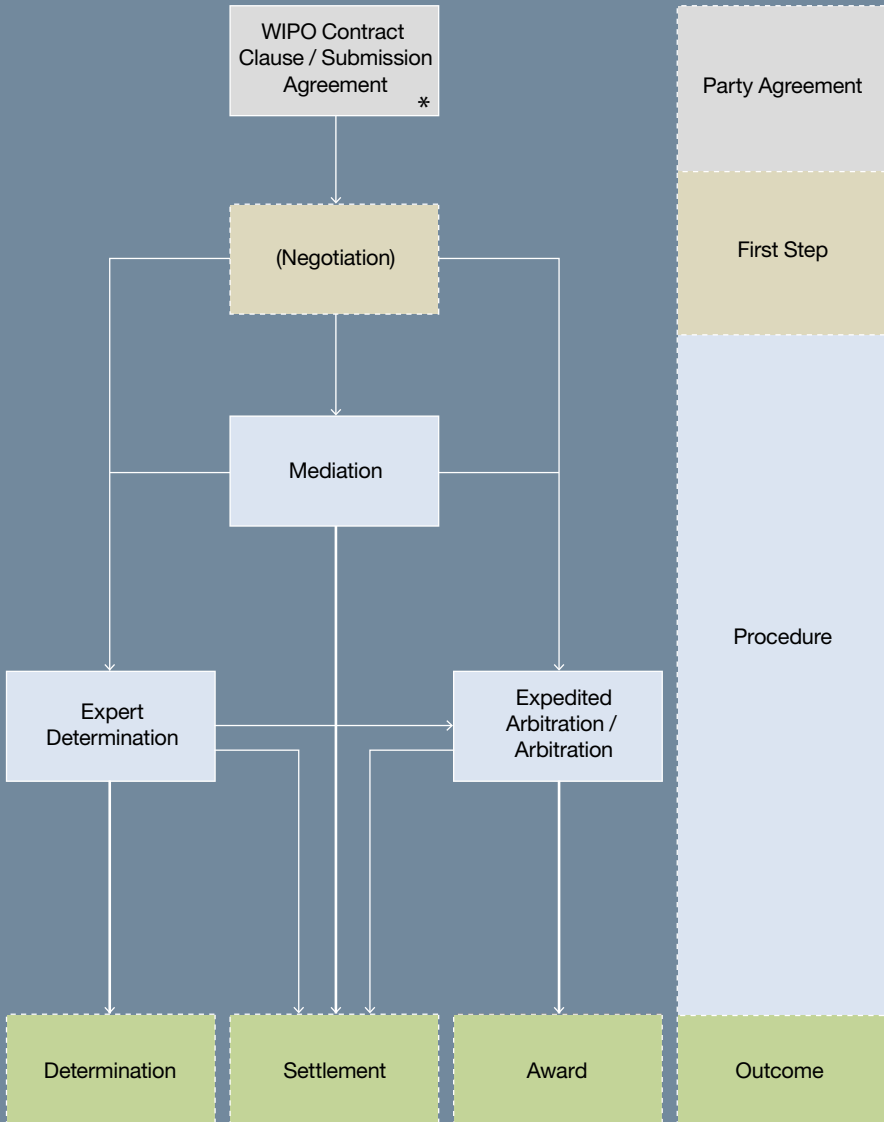
The WIPO Center also offers a **special procedure** that allows **trademark** owners to resolve cases of **abusive domain name registration and use** (“cybersquatting”).

The WIPO Center is the **leading provider** under the WIPO-initiated **Uniform Domain Name Dispute Resolution Policy (UDRP)**.

To assist their case preparation, WIPO parties can take advantage of the WIPO Legal Index and the WIPO Jurisprudential Overview, in addition to model forms.

More on WIPO Domain Name Dispute Resolution: [www.wipo.int/amc/en/domains](http://www.wipo.int/amc/en/domains)

# From Contract Clause to ADR Result



\* In the absence of an agreement, a party that wishes to propose submitting a dispute to WIPO Mediation or to WIPO Expert Determination may submit a unilateral request to the WIPO Center and the other party.

# Role of the WIPO Center

The WIPO Center helps parties achieve rapid and cost-effective resolution of their IP disputes. To this end, the WIPO Center actively:

- ✓ Helps the parties submit disputes to WIPO ADR procedures.
- ✓ Assists in the selection of specialized arbitrators, mediators and experts from the WIPO Center's database or otherwise.
- ✓ Sets the neutrals' fees, in close consultation with the parties and the neutrals, and administers the financial aspects of the proceedings.
- ✓ Throughout the case, liaises with the parties and the neutrals to ensure optimal communication and procedural efficiency.
- ✓ Arranges for desired support services, including meeting and hearing rooms.

## Why WIPO ADR

The WIPO Center's ADR services are used by multinational corporations, SMEs, R&D centers and universities from around the world. The WIPO Center furthermore collaborates in special procedures with national IP Offices and other IP stakeholders.



# WIPO ADR Model Clauses

There are model clauses for each WIPO ADR procedure as well as for combinations of these procedures. This is an example of a frequently-used combined clause:

## Mediation Followed, in the Absence of a Settlement, by [Expedited] Arbitration

“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].<sup>1</sup> The language to be used in the mediation shall be [specify language].<sup>2</sup>

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within [60][90] days of the commencement of the mediation,<sup>3</sup> it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined<sup>4</sup> by arbitration in accordance with the WIPO [Expedited] Arbitration Rules. Alternatively, if, before the expiration of the said period of [60][90] days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO [Expedited] Arbitration Rules. [The arbitral tribunal shall consist of [a sole arbitrator] [three arbitrators]<sup>5</sup>.] The place of arbitration shall be [specify place].<sup>6</sup> The language to be used in the arbitral proceedings shall be [specify language].<sup>7</sup> The dispute, controversy or claim referred to arbitration shall be decided in accordance with the law of [specify jurisdiction].”<sup>8</sup>

**WIPO model ADR clauses:** [www.wipo.int/amc/en/clauses](http://www.wipo.int/amc/en/clauses)

**WIPO Clause Generator:** [www.wipo.int/amc-apps/clause-generator](http://www.wipo.int/amc-apps/clause-generator)

### **Informal Explanatory Notes:**

1. *The parties are free to determine where they want the mediation to take place.*
- 2 and 7. *The parties can choose any language that suits them.*
3. *Setting a timeline for mediation in a multi-tiered clause helps the case stay on track towards a settlement or agreed follow-up procedure.*
4. *The appointed arbitral tribunal has the authority to render a final award. Such award is binding on the parties and enforceable internationally. However, parties retain the option to settle the dispute before an award is issued.*
5. *When deciding whether to appoint one or three arbitrators, parties weigh considerations of cost and efficiency against the value and complexity of the dispute. Under the WIPO Expedited Arbitration Rules the arbitral tribunal consists of a sole arbitrator.*
6. *The choice of “place of arbitration” determines the law that regulates the procedural framework of the case, such as the availability of interim measures of protection and the enforceability of the award. Regardless of their chosen place of arbitration, the parties may hold meetings or hearings anywhere in the world, at the convenience of parties, arbitrator(s) and witnesses.*
8. *The parties are encouraged to choose the substantive law, i.e. the law under which the arbitral tribunal decides the dispute.*

# Fees and Costs

The WIPO Center ensures that appointed neutrals charge competitive fees. The WIPO Center's own administration fees are not-for-profit.

WIPO Mediation			
Amount in Dispute	Administration Fee	Mediator's Fees	
Up to \$250,000	\$250	\$2,500 Indicative rates for 10 hours of preparation and mediation	
Over \$250,000	0.10% of the value of the mediation, up to a maximum fee of \$10,000	Indicative rate(s) \$300-\$600 per hour	Indicative rate(s) \$1,500-\$3,500 per day

WIPO Expedited Arbitration / WIPO Arbitration			
Type of Fee	Amount in Dispute	Expedited Arbitration	Arbitration
Registration Fee	Any Amount	\$1,000	\$2,000
Administration Fee	Up to \$2.5M	\$1,000	\$2,000
	Over \$2.5M and up to \$10M	\$5,000	\$10,000
	Over \$10M	\$5,000 +0.05% of amount over \$10M up to a maximum fee of \$15,000	\$10,000 +0.05% of amount over \$10M up to a maximum fee of \$25,000
Arbitrator(s) Fees	Up to \$2.5M	\$20,000 (fixed fee)	As agreed by the Center in consultation with the parties and the arbitrator(s)
	Over \$2.5M and up to \$10M	\$40,000 (fixed fee)	Indicative rate(s) \$300 to \$600 per hour
	Over \$10M	As agreed by the Center in consultation with the parties and the arbitrator	

(All amounts are in United States dollars)

A 25% reduction on the WIPO Center's registration and administration fees applies if a party (or both parties) to the dispute is (are) named as applicant or inventor in a published PCT application, holders of international registrations under the Hague system or the Madrid system, or WIPO GREEN technology providers or seekers.

**WIPO Fee Calculator:** [www.wipo.int/amc/en/calculator](http://www.wipo.int/amc/en/calculator)



**The World Intellectual Property Organization is the global forum for IP services, policy, information and cooperation.**

**WIPO provides highly efficient, fast and cost-effective services for innovation and creativity. WIPO helps to protect inventions, trademarks and designs in multiple countries, and also resolve IP disputes, including those involving domain names.**

**More on WIPO: [www.wipo.int](http://www.wipo.int)**

For more information contact

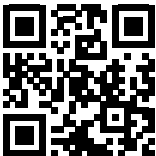
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WIPO Publication No. 799E/2016  
ISBN 978-92-805-2625-7