How to Resolve Entertainment Disputes through WIPO Alternative Dispute Resolution (ADR) Options

September 1, 2020
15h00 – 17h00
Mrs. Sandra Oyewole

Is a Partner at Olajide Oyewole LLP. She leads the Firm’s Intellectual Property & Technology practice and co-leads the Employment & Global Mobility practice. She has extensive experience in advising clients on sponsorship & financing of intellectual property, commercial contracts and media rights; strategic transactions for clients in the media, sports and entertainment industries; and regulatory & compliance matters in fintech & data protection.

She represents, the talent, content aggregators & distributors, concert & festival promoters & organisers, sponsors, financiers & investors, independent production & distributions companies, film makers, media companies, record labels, music publishers, traditional and emerging tech companies/platforms and related ministries, departments & agencies.

Sandra is listed as one of fifty women in Techcabal’s first Tech Women Lagos series. She is one of the IPT Champions for DLA Piper Africa. She also sits on the board of trustees of educational and tech organisations in Lagos. Sandra is committed to the creation of structure within the creative and innovative industries and this includes the strengthening of Nigeria’s anti-piracy and intellectual property laws and policies.
Ms. Aibee Abidoye

Is a Nigerian Music Business Executive. Trained as an attorney in New York, “Aibee” has logged several of years of transactional experience in the field of intellectual property, with particular focus on the music business in Nigeria. She is a recognized expert in the licensing, distribution and publishing of indigenous music content for film and television and has collaborated with platforms like Facebook, Apple Music and Youtube and mobile network operators like Etisalat and MTN as the future of digital media unfolds. She is a board member of MPAN, and an active member of COSON. She is a staunch advocate for the rights and recognition of songwriters and producers in the Nigerian content value chain.

A Certified Mediator, Aibee received her BA in Political Science at Pepperdine University, a Music Business and Management certification from UCLA and her JD of Law at Benjamin N Cardozo school of Law in New York.
Prof. Ike Ehiribe

Is an international arbitrator and dispute resolver. He was called to the Nigerian Bar (1982) and to the Bar of England and Wales (1996) by the Honourable Society of Lincoln’s Inn. He is a Fellow (1994) of the Chartered Institute of Arbitrators in London and also a Chartered Arbitrator (2007). He is a Fellow of the Asian Institute of Alternative Dispute Resolution (AIADR) based in Singapore; an accredited mediator of the Academy of Experts in Gray’s Inn. He is listed on the United Nations affiliated WIPO Panel of Neutrals based in Geneva and is a member of the WIPO Working Group on Mediation and Expedited Arbitration in Entertainment Disputes including Film and Media. He is also listed on the specialist IP Arbitration Panels of the Hong Kong International Arbitration Centre (HKIAC) and the Singapore International Arbitration Centre (SIAC).

He is a Visiting Professor and Fellow at the Centre for International Legal Studies (CILS) in Salzburg; a part-time Professor of Law at the School of Law, Christchurch Canterbury University, England. He is an approved tutor, trainer and assessor on the arbitration, adjudication and mediation training courses of the Chartered Institute of Arbitrators in London. He is one of the co-conveners of the nascent Mid-Atlantic-Caribbean Institute of Alternative Dispute Resolution (M.A.C.I.A.D.R).
Mr. Leandro Toscano

Is head of the Business Development Unit, WIPO Arbitration and Mediation Centre. He holds a law degree from the University of Buenos Aires and an LL.M. in International Dispute Resolution from the University of London (Queen Mary University of London and University College London). Before joining WIPO in 2008, he was in private practice in intellectual property and information technology law. Leandro was the Center’s representative at Maxwell Chambers in Singapore from 2011 until mid-2014.
Mr. Oluwatobiloba Moody

Is a Counsellor with the WIPO Nigeria Office (WNO) where he leads and oversees the operations of the WNO. Tobi previously worked with CIGI’s International Law Research Program in Waterloo, Canada, WIPO’s Traditional Knowledge Division, the World Trade Organization (WTO)’s Appellate Body Secretariat, and, the law firm of Olaniyi George & Co. Tobi obtained his Ph.D. in Global Intellectual Property Law from Queen’s University, Canada, where his research was recognized and funded by Canada’s most prestigious graduate award - the Vanier Scholarship; an LL.M. in International Trade and Investment Law (cum laude) from the University of the Western Cape in South Africa, and an LL.B. from the University of Ibadan. He is a member of the Nigerian Bar.
The Current Trends and Practices for Managing Entertainment Disputes in Nigeria

Sandra Oyewole
010920
The Entertainment Industry
The People

CONTENT CREATORS
- artists, actors, photographers, producers, production services, writers, collection societies

THE CREW
- producers, directors, production designers, sound engineers, videographers, make up, costumes

FINANCE
- sponsorship, investors, funds, the banks

DISTRIBUTION
- cinemas, physical and online platforms, other media

CONSUMERS
- users, audience, fans, customers, clients

GOVERNMENT
- the MDAs, Regulators, Law makers, the judiciary, ADR

CONSULTANTS
- lawyers, accountants, PR, advertisers, promoters, agents, managers

OTHER PLAYERS
- tech companies, corporates, hospitality venues, facility managers, construction

THE BAD GUYS
- pirates, hackers

Etc.
The Agreements

- **EMPLOYMENT**: managers, agents, band members, etc.
- **PERFORMANCE**: actor agreements, releases, performance, riders, tours, concerts, production services, merchandising
- **RECORDING**: artist agreements, master recording, sampling, split sheets, release and assignment, production and mixing
- **FINANCE**: loans, funds, sponsorship, investor, term sheets, barter
- **DISTRIBUTION**: screening, on demand, physical, digital
- **SONGS**: songwriters, publishers, co-publishing, administration, mechanical & synch licenses, master use license, collaboration
- **OTHERS**: life story rights, image rights, hosting rights, endorsements, retainers, consultancy, book deals, promoters and organizations
- **Etc.**
Laws Regulating the Entertainment Industry in Nigeria

- Copyright Act, Trademarks Act, Patents & Designs Act
- CAMA, Insurance Laws, Banking & Finance Laws
- NCC Act, NBC Act, NOTAP Act
- Cybercrimes Act, NDPR, Criminal Code
- Court Rules, International Conventions
- Law of Contract, Laws of Defamation
- etc.
Introduction

Some high profile disputes

The iceberg

Value
Some Disputes in Nigeria’s Entertainment Industry

<table>
<thead>
<tr>
<th>Party 1</th>
<th>Party 2</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>RACONTEUR PRODUCTION V. DIONI VISIONS</td>
<td></td>
<td>Copyright claim against Omoni Oboli over the movie: Okafor’s Law. Judgement in favour of the defendant for failure of the plaintiff to adduce sufficient and credible evidence of ownership or authorship of the screen play.</td>
</tr>
<tr>
<td>DANNY YOUNG V TIWA SAVAGE</td>
<td></td>
<td>Copyright Infringement: Danny Young filed ₦205 million copyright suit against Tiwa Savage in February 2019 for the infringement of his Song <em>Oju Tiwon</em> in Tiwa's Song titled <em>One</em>. The parties settled the dispute out of court.</td>
</tr>
<tr>
<td>PHOTOGRAPHER V NEWSPAPER</td>
<td></td>
<td>Unauthorized use of image.</td>
</tr>
<tr>
<td>ORGANISER V SPONSOR</td>
<td></td>
<td>Failure to deliver on obligations.</td>
</tr>
<tr>
<td>DECCA RECORDS V FELA RANSOME KUTI</td>
<td></td>
<td>Damage to property.</td>
</tr>
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Litigation & the Entertainment Industry

530 Judgments from the small claims court in 2019

830 Cases handled by the small claims court in 2019

+200 Judgments on IP cases in Nigeria 530
The Wig and Gown

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‘... take me to the court on time’

CAUSES
- IP ownership and infringement
- Breach of contract
- Physical and sexual misconduct
- Uncertainty of contractual terms
- Assault
- Pandemics
- Etc.

CHALLENGES
- Fear
- Expensive
- Time consuming
- Not confidential
- Beneficial to wealthy party
- Does not preserve existing relationship
- More formal
- Unsuitable for resolving technical issues
- Parties cannot determine outcome

COURTS
- Customary Court
- Magistrate Court
- Federal High Court
- High Court of the States
- Court of Appeal
- Supreme Court

THE FUTURE IS HERE
- ODR
- COVID-19
- Digitization
Comments on ADR

Globally the entertainment industry explores ADR as its preferred channel for in-house disputes. Especially where parties involved are big players.

In Nigeria there is a general reluctance to explore litigation. This is evidenced by the number of fully prosecuted cases from the industry in comparison with the number out of court settlements.

Advantages of ADR include confidentiality, privacy, secrecy, avoids unwanted publicity, positive image of industry, flexibility, collaborative procedure, shorter process, the adjudicator is usually an expert in the sector and neutral, parties take control, saving on legal fees.
THANK YOU
Overview: WIPO Arbitration and Mediation Center

Leandro Toscano
Head, Business Development Unit

WIPO Arbitration and Mediation Center
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
- International neutrality
- Global leader in domain name dispute resolution services
What is the WIPO Center’s role?

**WIPO Center is available to**
- provide information and procedural advice
- assist parties in considering the referral of a dispute to WIPO proceedings
- assist parties in the selection of specialized mediators, arbitrators and experts
- arrange for support services, including meeting rooms and videoconferencing facilities

**WIPO Center does not**
- provide legal advice or represent parties in dispute
- force any party to refer a dispute to or participate in WIPO proceedings
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

Arbitration

- Consensual procedure
- Parties submit dispute to one or more chosen arbitrators
- Binding and final decision (award)
  - based on parties’ rights and obligations
  - enforceable internationally
- Normally forecloses court options
Why Consider IP ADR?

- Cost of IP court litigation
  - Expedient solutions

- Internationalization of creation and use of IP
  - Cross-border solutions; consolidate in one procedure

- Technical and specialized nature of IP
  - Specific expertise of the neutral

- Short product and market cycles in IP
  - Time-efficient procedures

- Confidential nature of IP
  - Private procedures

- Collaborative nature of IP creation and commercialization
  - Mechanisms that preserve relations
ADR 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)
- International and national legislative efforts
- Mediation incentives, promotion schemes
- United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention)
WIPO ADR Rules (2020)

- IP and technology specific elements
  - e.g., confidentiality, technical evidence, interim relief
- Applicable to all commercial disputes

- Flexibility

- For domestic and international disputes
  - Accommodating different legal/procedural traditions

- WIPO Mediation and Expedited Arbitration for Film and Media
Routes to WIPO ADR

- ADR contract clause
  - WIPO model clauses: [https://www.wipo.int/amc/en/clauses](https://www.wipo.int/amc/en/clauses)

- ADR submission agreement
  (e.g., in existing non-contractual disputes)

- Unilateral request for WIPO Mediation by one party
  (Art. 4 WIPO Mediation Rules)

- Court referrals
WIPO mediation and arbitration cases

Settlement rates

- WIPO Mediation: 70%
- WIPO Arbitration: 33%

Categories:
- **Copyright**
  - Art
  - Broadcasting
  - Collective Management
  - Entertainment
  - Film and Media
  - Infringements
  - TV Formats
- **Commercial**
  - Design
  - Distribution
  - Energy
  - Franchising
  - Marketing
  - Sports
- **Trademarks**
  - Coexistence
  - Infringements
  - Licenses
  - Opposotions
  - Revocations
- **Patents**
  - Cross-licensing
  - Infringements
  - Licenses
  - Ownership
  - Patent Pools
  - R&D / Tech
  - Transfer
  - Royalty Payment
- **ICT**
  - Mobile Apps
  - Outsourcing
  - Systems Integration
  - Software Development
  - Software Licensing
  - Telecommunications
WIPO Center’s case experience: Entertainment disputes

- Contractual disputes
  - Broadcast rights distribution agreement dispute
  - Copyright royalty dispute in the music industry
  - Audiovisual co-production disputes
    - Documentary co-production
    - Film co-production
    - TV pilot production dispute

- Non-contractual disputes
  - Infringement of TV formats
  - Royalty payments of common tariffs between cable operators and CMOs
  - Unauthorized public communication of audiovisual works
WIPO Mediation case example

- CMOs and cable operators
- Royalty payments for use of copyright protected works
- WIPO Mediation based on a submission agreement
- WIPO Mediator specialized in copyright
- Settlement
- 4 months
WIPO Arbitration case example

- Broadcast rights distribution agreement, including WIPO Arbitration clause
- TV distribution company and international sports federation
- TV distribution company claimed damages for breach of contract
- Sole arbitrator
- Award issued within one year
WIPO Expedited Arbitration case example

- Film co-production agreement for animated film, including WIPO Expedited Arbitration clause
- Claimant alleged wrongful termination of co-production agreement
- Defendant’s counter-claim argued lawful unilateral termination, base on contractual breaches
- Sole arbitrator
- Two-days online hearing session
- Award declared lawful termination of co-production agreement
- Less than a year
Recommended WIPO Contract Clauses and Submission Agreements:

Referral to WIPO dispute resolution procedures is consensual. To facilitate party agreement, the WIPO Center provides recommended contract clauses (for the submission of future disputes under a particular contract) and submission agreements (for existing disputes, including those referred by courts).

Recommended WIPO Contract Clauses and Submission Agreements:

- Mediation
- Arbitration
- Expedited Arbitration
- Expert Determination
- Mediation followed, in the absence of a settlement, by [expedited] arbitration
- Mediation followed, in the absence of a settlement, by expert determination
- Mediation followed, in the absence of a settlement, by court litigation
- Expert determination, binding unless followed by [expedited] arbitration

The recommended WIPO contract clauses and submission agreements are also available in Chinese, French, German, Greek, Japanese, Korean, Portuguese and Spanish.

To assist parties in the drafting of clauses and submission agreements, the WIPO Center makes available the WIPO Clause Generator.

WIPO ADR Options

If you need further assistance when drafting your clause, you can contact us by email at arbiter.mail@wipo.int or by phone at +41 22 338 8247.

https://www.wipo.int/amc/en/clauses
Clause example for your contract: mediation followed 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]. The language to be used in the mediation shall be [specify language].

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, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined 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 place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute, controversy or claim referred to arbitration shall be decided in accordance with [specify jurisdiction] law.
Unilateral Request for WIPO Mediation

- In the absence of a mediation agreement, a party can propose submitting a dispute to mediation

- Complete and sign the Request for WIPO Mediation
  - [https://www.wipo.int/amc-forms/adr/unilateral-mediation](https://www.wipo.int/amc-forms/adr/unilateral-mediation)

- Upon receipt of the Request, the WIPO Center is available to provide information on the WIPO Mediation process to the other party
Unilateral Request for WIPO Mediation

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:

<table>
<thead>
<tr>
<th>Requesting Party</th>
<th>Other Party</th>
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<tbody>
<tr>
<td>Name:</td>
<td>Name:</td>
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<tr>
<td>Country of domicile:</td>
<td>Country of domicile:</td>
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<td>Tel:</td>
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<td>E-mail:</td>
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<td>Address:</td>
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<td>E-mail:</td>
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<td>Address:</td>
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</tbody>
</table>

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 arbitral.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 arbitral.mail@wipo.int and to the requesting party.

Place and Date: ____________________
Signature: ________________________
WIPO Good Offices

- Disputes where one or both parties consider submitting the dispute to mediation or arbitration
  - No previous agreement on how to resolve the dispute
    - Infringements
    - Cases pending before the courts

- Procedural advice

- No fees at this stage

- Online form: [www.wipo.int/amc-forms/adr/good-offices-services](http://www.wipo.int/amc-forms/adr/good-offices-services)
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.

Join the Pledge!

Time- and Cost-Efficient Alternative Dispute Resolution Services for Copyright and Collective Management Disputes

The WIPO Arbitration and Mediation Center’s alternative dispute resolution (ADR) services are regularly used by artists, creators, collective management organizations (CMOs), small and medium-sized enterprises (SMEs), and multinational corporations from around the world.

Contact us

WIPO Mediation and Expedited Arbitration for Film and Media

The WIPO Mediation and Expedited Arbitration Rules for Film and Media have been specifically tailored to resolve disputes in the film and media sectors, without the need for court litigation. Developed by the WIPO Arbitration and Mediation Center in cooperation with industry experts, these rules, as well as the special model contract clauses and submission agreements, are particularly appropriate for international film and media transactions where parties require an expedited dispute resolution process.

Areas of Dispute in the Film and Media Sectors

- production and co-production agreements
- joint-ventures
- collecting societies
- copyright related agreements
- financing agreements
- distribution agreements
- broadcasting agreements
- completed work agreements
- laboratory-access agreements
- funding agreements
- development agreements
- licensing
- music synchronization agreements
- merchandising agreements
- insurance agreements
- artist and talent agreements
- new media agreements
- sponsorship agreements
- co-ownership agreements
- confidentiality and non-disclosure agreements
- TV and other media formats

WIPO-MCST Survey on the Use of ADR Mechanisms for B2B Digital Copyright- and Content-related Disputes

The World Intellectual Property Organization’s Arbitration and Mediation Center (WIPO Center), in collaboration with the Ministry of Culture, Sports and Tourism of the Republic of Korea (MCST), is conducting a Survey on the Use of Alternative Dispute Resolution (ADR) Mechanisms for Business to Business (B2B) Digital Copyright- and Content-related Disputes. The Survey was developed with the support of the Deep Tech Dispute Resolution Lab of the University of Oxford.

Take the Survey

Together, we would greatly appreciate your participation in the Survey.

Objective

The objective of the Survey is to help develop a fact-based understanding of B2B digital copyright- and content-related disputes across industries and to assess the current use of ADR mechanisms (e.g., mediation, arbitration) as compared to court litigation to resolve such disputes. The Survey should also help inform the potential development of appropriate dispute resolution mechanisms for these types of disputes.

https://www.wipo.int/amc/en/center/copyright/

https://www.wipo.int/amc/en/film/
Contact us

- Queries: arbiter.mail@wipo.int
- Further information: https://www.wipo.int/amc/en/center/copyright/
- WIPO Center LinkedIn
- WIPO Center Newsletter
- WIPO Center Webinars