WIPO Mediation and Expedited Arbitration for Film and Media

Seminar on Dispute Prevention and Resolution in the Film and Media Industry

London
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Sarah Theurich, Legal Staff, WIPO Arbitration and Mediation Center
World Intellectual Property Organization

- International organization, based in Geneva, Switzerland
- Dedicated to developing a balanced and accessible international intellectual property system
- 184 Member States
- Administers 24 treaties

WIPO activities:
- Normative
- Development cooperation
- Services
WIPO Arbitration and Mediation Center

- Established 1994, offices in Geneva and Singapore
- Provision of time and cost-effective alternative dispute resolution (ADR) services for intellectual property and related disputes between private parties
- International
- Specialized in IP/entertainment
- Not-for-profit
- Administration of cases
- Resource Center
WIPO Center Caseload

- +230 mediations and arbitrations
- **Contractual:**
  - production and co-production agreements
  - joint-ventures
  - financing agreements
  - film and TV rights distribution agreements
  - merchandising/licensing agreements
  - insurance agreements
  - new media agreements
  - copyright related agreements
  - TV and other media formats
  - settlement agreements
  - reciprocity agreements
- **Cases referred by courts to mediation**

- **Leading provider for domain name disputes:** +30,000 domain name disputes since 2000 (e.g., <juliaroberts.com>, <harypotter.com>, <madonna.com>)
WIPO Center Caseload

- **Parties involved have included**
  - Large Companies
  - SMEs
  - Collecting Societies
  - Producers
  - Individual Authors

- **Remedies**
  - Damages (Euro 20 K to Euro 600 M)
  - Re-negotiation of agreements
  - Declarations of infringement
  - Creative Solutions
WIPO Cases: Business Areas

- Pharmaceuticals: 13%
- Mechanical: 18%
- Other: 22%
- Chemistry: 2%
- Information Technology: 28%
- Life Sciences: 3%
- Luxury Goods: 2%
- Entertainment: 10%
WIPO Mediation and Expedited Arbitration for Film and Media

www.wipo.int/amc/en/film

WIPO Mediation and Expedited Arbitration for Film and Media

The WIPO Arbitration and Mediation Center has developed the WIPO Mediation and Expedited Arbitration Rules for Film and Media specifically tailored to resolve potential disputes in the film and media sectors.

Developed in cooperation with industry experts, these new rules, as well as the special model contract issues and submission agreements, are particularly appropriate for international film and media transactions where parties require an expedited arbitration process and mediation.

Areas of Dispute in the Film and Media Sectors

- production and co-production agreements
- joint ventures
- copyright related agreements
- financing agreements
- distribution agreements
- broadcasting agreements
- completion bond 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 agreement
- confidentiality and non-disclosure agreements
- TV and other media formats

The fast moving nature of these sectors demands fast and cost-efficient dispute resolution tools. Mediation and arbitration can provide an efficient alternative to court litigation, especially for international disputes.

Potential users of the WIPO Mediation and Expedited Arbitration Rules for Film and Media include film makers, directors, actors, performers, guild and industry associations, producers, authors, screenwriters, creators, investors, financiers, film funds, performance bond companies, insurers, sales agents, entertainment, media, and IP lawyers consultants and accountants, ISPs, broadcasters, exhibitors, publishing houses, trade federations, collecting societies, users of creative material.

Rapid and Flexible Conflict Resolution Procedures

The new Rules for film and media provide for a mediation procedure and an expedited arbitration procedure that can either be combined or used independently at the parties’ option. These rules take account of the particular needs of those involved in the media and film sectors desiring an expedited procedure. The time limits in the WIPO Arbitration Rules apply to the various stages of the proceedings have been shortened in order to expedite the dispute resolution process chosen by the parties.
WIPO Mediation and Expedited Arbitration for Film and Media

- Adapted for disputes arising out of cross-border or cross-regional film and media transactions, in particular co-production disputes
- Tailored Rules (shorter timelines, specific appointment procedure)
- Model dispute resolution contract clauses
- WIPO Film and Media Panel (international mediators, arbitrators and experts specialized in film and media matters)
- Reduced Fees
- WIPO ECAF
- Training
Mediation followed by Expedited Arbitration for Film and Media

Try mediation before expedited arbitration, at least until

- lapse of time period
- termination

Combining the benefits

- arbitration well-prepared
- increase of settlement chances

"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 for Film and Media. The place of mediation shall be [...]. The language to be used in the mediation shall be [...]."

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within [30][60] 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 for Film and Media. Alternatively, if, before the expiration of the said period of [30][60] 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 for Film and Media. The arbitral tribunal shall consist of a sole arbitrator. The place of arbitration shall be [...]. The language to be used in the arbitral proceedings shall be [...]. The dispute, controversy or claim referred to arbitration shall be decided in accordance with [...] law."
WIPO Mediation and Expedited Arbitration for Film and Media – the Procedure

WIPO Mediation for Film and Media

- Request for Mediation
- Appointment of the Mediator
  - Parties have 7 days to agree on the person of the Mediator
  - List provided by the Center
  - Return of the list within 7 days
  - Appointment of the Mediator by the Center
- Mediation Session
- Settlement of the Dispute

WIPO Expedited Arbitration for Film and Media

- Request for Arbitration and Statement of Claim
  - Answer to Request for Arbitration and Statement of Defense (20 days)
  - Appointment of the Arbitrator
- Appointment of the Arbitrator by the Center
  - Parties have 7 days to agree on the person of the Arbitrator
  - List provided by the Center
  - Return of the list within 7 days
  - Appointment of the Arbitrator by the Center
- Hearing (maximum 3 days)
- Closure of Proceedings (2 months)
- Final Award (1 month)
## WIPO Mediation and Expedited Arbitration for Film and Media

<table>
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<tr>
<th>TYPE OF FEE</th>
<th>AMOUNT IN DISPUTE</th>
<th>MEDIATION</th>
<th>EXPEDITED ARBITRATION</th>
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<td>Administration Fee</td>
<td>Up to $2.5 M</td>
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<td>Mediator and/or Arbitrator Fees</td>
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<td>Unless the parties agree otherwise, a rate of $300 per hour as agreed by the Center in consultation with the parties and the mediator, capped at a maximum of $10,000.</td>
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WIPO Mediation and Expedited Arbitration for Film and Media - Format Dispute Resolution

- TV and other media format related dispute resolution
- As of April 2010, the WIPO Center and the Format Recognition and Protection Association (FRAPA) collaborate in alternative dispute resolution in the area of TV program format disputes
- Under this collaboration, the WIPO Center takes on FRAPA’s existing mediation activity and administers TV format related disputes filed under the WIPO Mediation and Expedited Arbitration Rules for Film and Media
WIPO Electronic Case Facility

- **Web-based custom-created application**
  - For WIPO arbitration and mediation cases
  - By party agreement

- **Electronic case file**
  - Filing, storage, search, retrieval
  - Email alerts to all participants for each use of case file

- **Case management information**
  - Case overview, contact details
### WIPO Electronic Case Facility (ECAF)

#### Case: WIPOA20020

**Licensing v. AB Technics Inc.**

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WIPO Arbitration Example - TV Rights Distribution Agreement

- Agreement between a sports federation and a media company that manages TV rights
- Exclusive TV distribution rights for certain regions
- WIPO Arbitration Clause, Sole Arbitrator, Swiss Law
- Company starts arbitration against sports federation
- Center provides list of arbitrators specialized in entertainment law and sports
Format Dispute Example

- Dispute between a format creator and a TV rights distributor
- Recognition of the creation of the TV format
- Issues of confidential information
- WIPO exercises its good offices to facilitate submission to mediation
WIPO Case Results: Settlement

Mediation

- Settled: 73%
- Not settled: 27%

Arbitration

- Settled (Award): 42%
- Not settled: 58%
AGICOA (Association of International Collective Management of Audiovisual Works)

AGICOA Conflict Resolution:

- **First mandatory phase**: AGICOA Conflict Resolution Procedure

- **Second Optional Phase**: WIPO Expedited Arbitration for AGICOA:
  - Notification of Intention to file a request for arbitration
  - Language of procedure (English or French)
  - Reduced fees
  - AGICOA implements arbitral award
  - Special Panel of copyright and entertainment law arbitrators
“Entidad de Gestión de Derechos de los Productores Audiovisuales” (collecting society that represents and defends the interests of audiovisual producers in Spain)

Disputes when two or more EGEDA rights holders who have declared their rights to EGEDA, claim to be entitled to certain exploitation rights

First Mandatory Phase: EGEDA Conflict Resolution Procedure

Second Optional Phase: WIPO Expedited Arbitration for EGEDA:
- Notification of intention to file a request for arbitration
- Language of procedure (Spanish and English)
- Arbitrator's fees: EUR 200 / hr, capped at EUR 4,000
- EGEDA implements arbitral award
- Panel of Copyright and Entertainment Law Arbitrators
Additional Information

- **WIPO Center Website:** [www.wipo.int/amc](http://www.wipo.int/amc)
- **WIPO Events:** [www.wipo.int/amc/en/events/](http://www.wipo.int/amc/en/events/)
  - WIPO-FRAPA Workshop “How to Resolve your Format Dispute?”
    MIPCOM, Cannes, April 2, 2011
  - Masterclass on Legal Issues in the Film Industry, Screen Singapore,
    Singapore, June 2011
  - WIPO Domain Name Workshop, Geneva, October 11 and 12, 2011
  - WIPO Arbitration Workshop, Geneva, October 13 and 14, 2011
- **Email:**
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