



Resolving Copyright and Art Disputes through WIPO Mediation and Arbitration

**ICOM-UNIGE Conference: When
Museums Go Online – Dispute
Resolution**

**Geneva, Switzerland
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WIPO Arbitration and Mediation Center

WIPO Arbitration and Mediation Center

- Facilitates the resolution of commercial disputes between private parties through mediation and arbitration
 - Offices in Geneva and Singapore
 - International **neutrality**
- Resolution of IP disputes benefits from a **specialized** provider
 - WIPO mediators, arbitrators and experts experienced in IP and technology
- Competitive WIPO fees
- Services include mediation, (expedited) arbitration, expert determination, good offices and domain name dispute resolution



Why ADR for Copyright and Art Disputes?

- Cost of court litigation
- Internationalization of creation and use of IP
- Specialized nature of disputes
- Confidentiality/reputation
- Few players in market

WIPO Caseload

Copyright

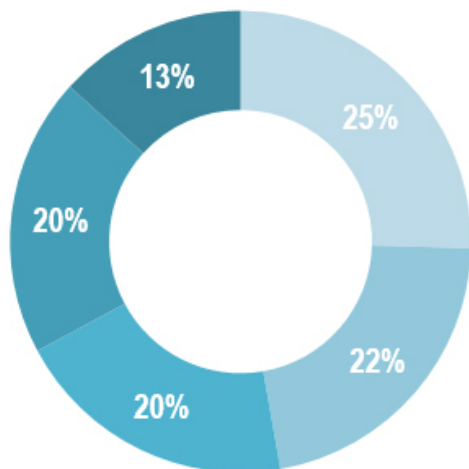
Art
Broadcasting
Collective Management
Entertainment
Film and Media
Infringements
TV Formats

Commercial

Design
Distribution
Energy
Franchising
Marketing
Sports

Trademarks

Coexistence
Infringements
Licenses
Oppositions
Revocations



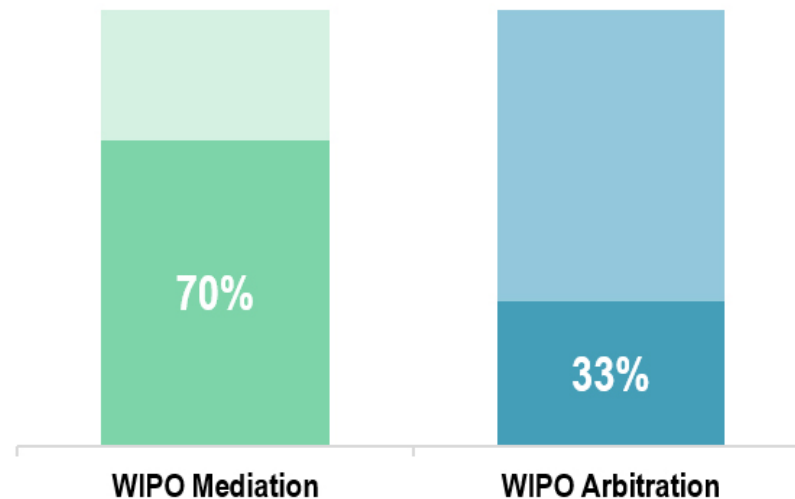
Patents

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

ICT

Mobile Apps
Outsourcing
Systems Integration
Software Development
Software Licensing
Telecommunications

Settlement rates



WIPO Art and Cultural Heritage Mediation Examples

■ Restitution

- Restitution claims concerning cultural heritage objects, e.g., between a municipality where objects had originally been found and the museum where those goods are exhibited

■ Authenticity of a Painting

- Dispute between owner of a painting and a museum
- Owner claimed that the painting was an original based on expert reports, while the museum issued an expertise that held against authenticity

■ Ownership of Art Works

- Dispute between art foundation and museum
- Art foundation claimed that the museum did not/no longer have the rights to exhibit certain art works (right transfer)

WIPO Art and Cultural Heritage Arbitration Examples

■ Artist Promotion Dispute

- Cooperation agreement between an art gallery and artist to promote the artist in the international market; agreement contained WIPO arbitration clause
- Three years after the signing of the agreement, artist terminated the agreement; art gallery initiated WIPO arbitration
- WIPO Center appointed three arbitrators experienced in art law
- Tribunal considered that there was potential for settlement; parties reached settlement and asked the tribunal to render a consent award

■ Art performance insurance dispute

- WIPO Expedited Arbitration
- Parties from Europe and Asia
- Hearing in Frankfurt; award within 5 weeks

Role of the WIPO Center

- Procedural assistance
 - Information and guidance on ADR
 - Drafting ADR clauses and submission agreements
- Administering cases
 - Containing time and costs
 - WIPO eADR and **online tools**
- Assisting selection and appointment of mediators and arbitrators; negotiating fees
 - 2,000+ WIPO experts from all regions
 - Specialized in IP and technology (including copyright and art)

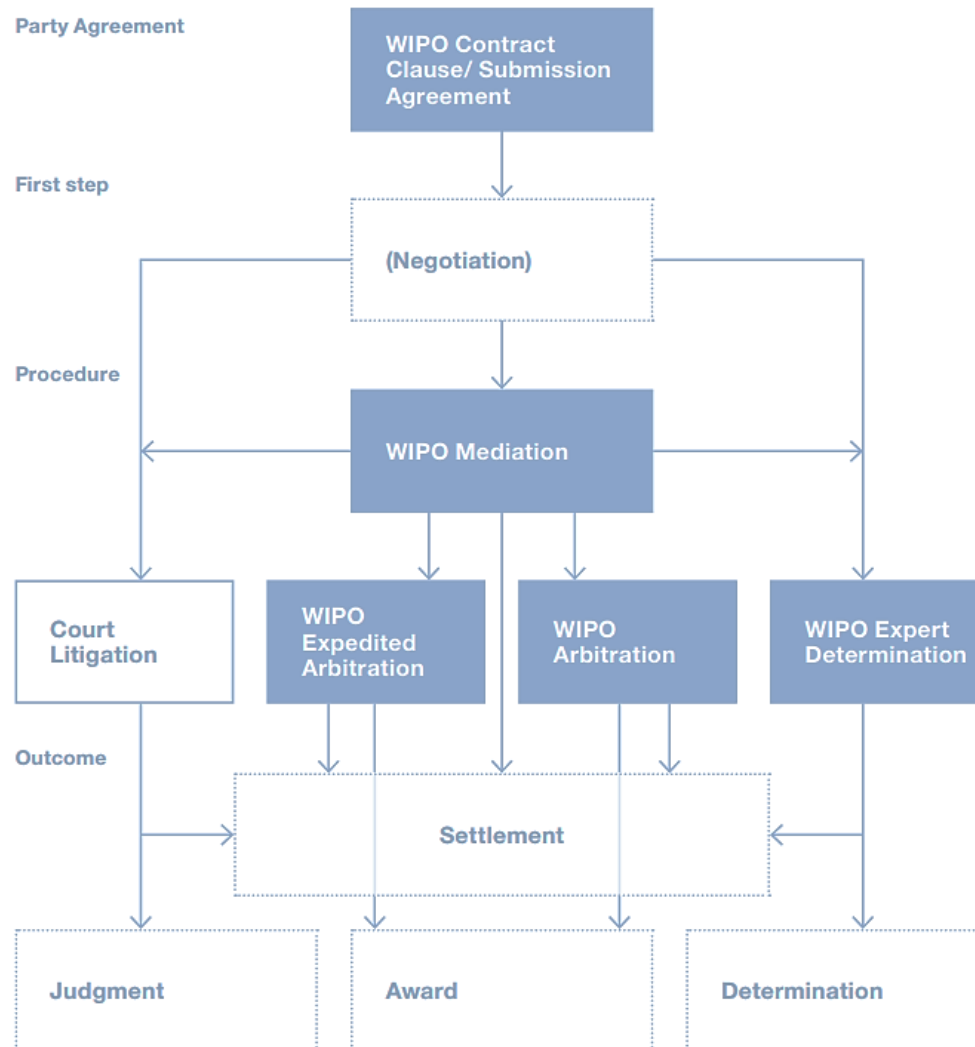
WIPO ADR for Art and Cultural Heritage Disputes

- Case administration
 - Under WIPO Rules, or under special procedures
 - **ICOM-WIPO Mediation Rules**
 - **Reduced Schedule of Fees for ICOM-WIPO Mediation**
 - WIPO e-ADR and online tools
- ICOM-WIPO List of Mediators
- Collaboration with ICOM and concerned stakeholders to promote the use of ADR for art and cultural heritage disputes

Routes to WIPO ADR

- ADR contract clause electing WIPO Rules
 - WIPO Mediation, Arbitration / Expedited Arbitration, and/or Expert Determination
 - **Model clauses:** www.wipo.int/amc/en/clauses
- ADR submission agreement electing WIPO Rules, e.g., in existing non-contractual disputes
- Unilateral request for WIPO Mediation by one party (Art. 4 WIPO Mediation Rules)
- Court referrals


WIPO ADR Options



WIPO Mediation followed by WIPO 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.



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WIPO Checklist for the Online Conduct of Mediation and Arbitration Proceedings

Preliminary Considerations

1) Do the WIPO Mediation, Arbitration and Expedited Arbitration Rules (WIPO Rules) address the online conduct of proceedings?

Yes, the WIPO Rules allow parties, mediators and arbitrators to conduct proceedings online as appropriate (Article 10 [WIPO Mediation Rules](#), Article 37(a) [WIPO Arbitration Rules](#), Article 31 (a) [WIPO Expedited Arbitration Rules](#)). In addition, mediators and arbitrators have the duty to ensure that proceedings take place with due expedition (Article 11 WIPO Mediation Rules, Article 37(c) WIPO Arbitration Rules, Article 31(c) WIPO Expedited Arbitration Rules). In the WIPO Center's case experience, this has included the online conduct of mediation meetings and arbitration hearings.

Pursuant to Article 40 WIPO Arbitration Rules/Art. 34 WIPO Expedited Arbitration Rules, the preparatory conference can be held in any format; in practice, it normally is conducted via telephone, videoconference, or increasingly using online tools.

2) Is it possible to conduct WIPO Mediation and Arbitration proceedings in a hybrid format?

Yes, the WIPO Center has administered some proceedings where some parties, mediators, or arbitrators participated in meetings or hearings in-person while others joined through online tools.

Choice of Online Platform

3) Are parties, mediators and arbitrators in WIPO proceedings free to choose the online platform they wish to use for their proceedings?

Yes, parties, mediators and arbitrators are free to agree on the online platform(s) they wish to use. In WIPO mediations and arbitrations, this has included the use of WebEx, Zoom, Teams, Bluejeans, WhatsApp, and Skype for Business.

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:

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-MCST Survey on ADR for B2B Digital Copyright and Content Disputes

- 2016-2020 24% of WIPO cases relate to copyright
- Development of best ADR practices for digital copyright and content disputes taking into account relevant legislation and existing contractual practices
- WIPO ADR for User Generated Disputes
 - Scope: copyright exceptions and limitations, authorization/license, public domain/originality

Contact us

- Queries: arbiter.mail@wipo.int
- Clauses: www.wipo.int/amc/en/clauses
- Rules: www.wipo.int/amc/en/rules
- Neutrals and case examples: www.wipo.int/amc
- Endorse the WIPO Mediation Pledge:
<https://www.wipo.int/amc/en/mediation/pledge.html>

- Offices:
 - Geneva, Switzerland
 - Singapore, Singapore

