



Resolving IP and sports-related disputes through WIPO alternative dispute resolution options

#worldipday

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, 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, including sports-related disputes
 - WIPO mediators, arbitrators and experts experienced in IP - able to deliver informed results efficiently
- International neutrality



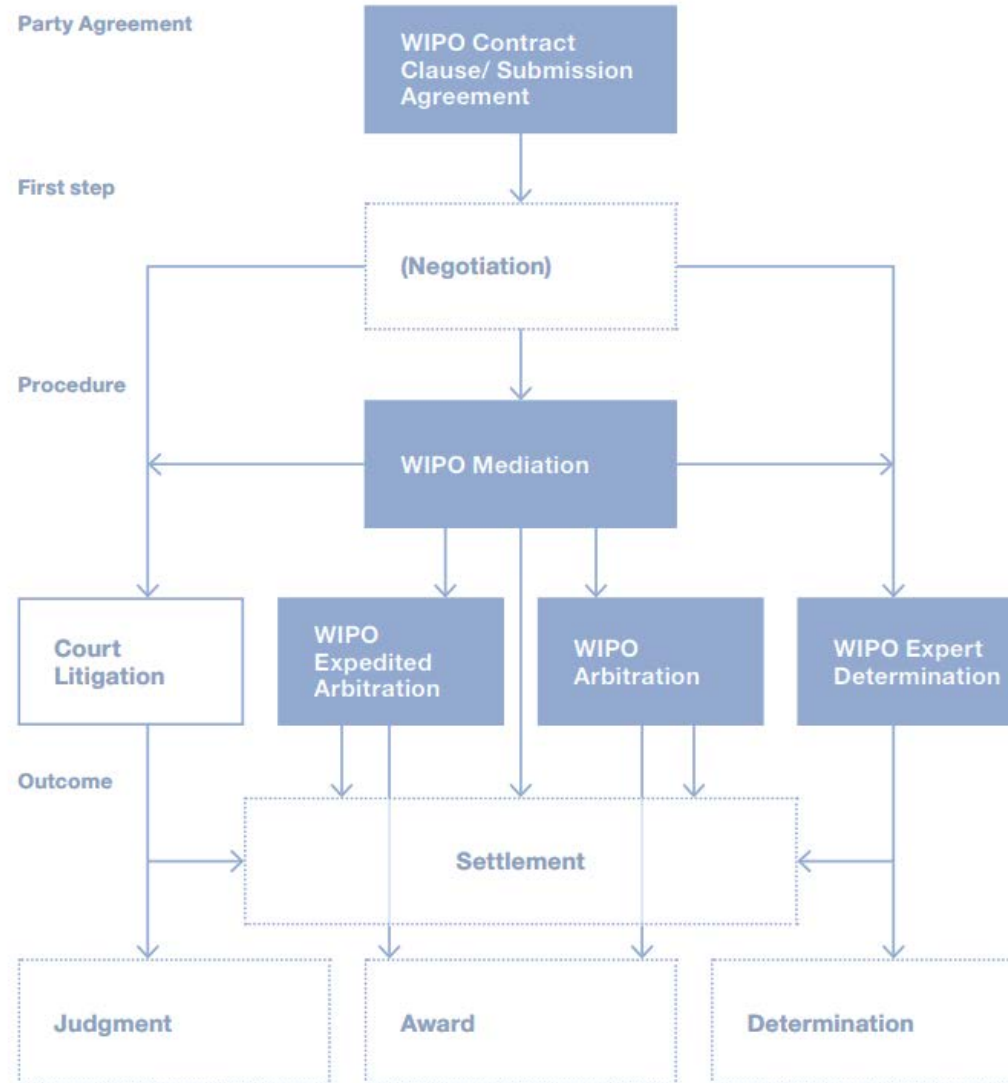
Mediation

- 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

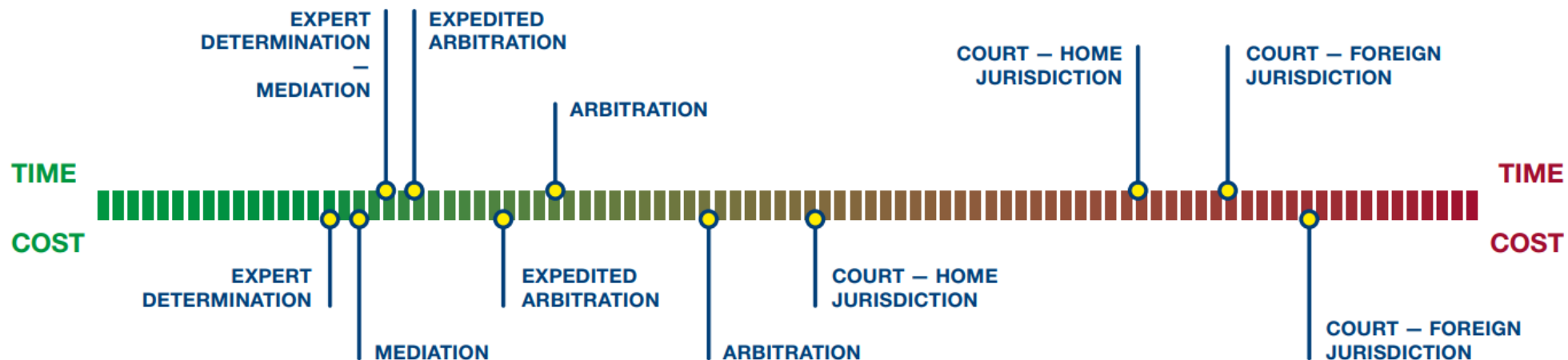
WIPO ADR options



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.

Time and cost: how does IP ADR compare to the courts?



How can you use WIPO ADR?

For what kind of disputes?	How to refer disputes to WIPO ADR	WIPO resources
For potential future contractual disputes	Inclusion of ADR contract clause	WIPO model ADR clauses
For existing disputes (e.g., IP infringement)	ADR submission agreement by all parties	WIPO model ADR submission agreements
	Unilateral request by one party	Unilateral Request for WIPO Mediation
For existing disputes pending in national courts	ADR submission agreement by all parties	WIPO model ADR submission agreements
	Unilateral request by one party	Unilateral Request for WIPO Mediation

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

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.

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
 - Infringement
 - Cases pending before the courts

- Procedural advice

- No fees at this stage

What is the WIPO Center's role?

■ WIPO Center can

- 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 (2,000+ from around the world)
- arrange for support services, including meeting rooms and videoconferencing facilities

■ WIPO Center cannot

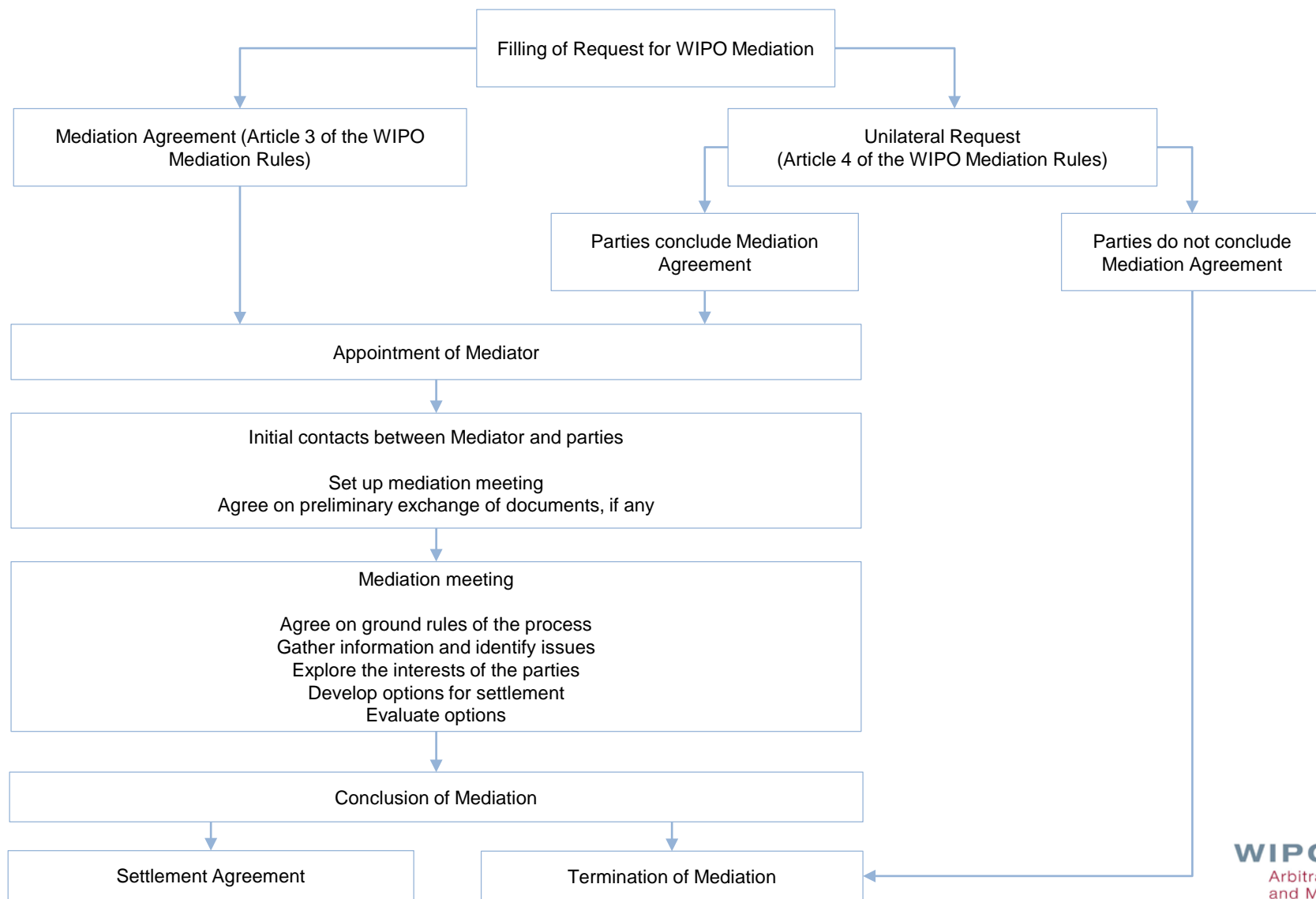
- provide legal advice or represent parties in dispute
- force any party to refer a dispute to or participate in WIPO proceedings

WIPO ADR Rules

- IP-specific elements
 - e.g., confidentiality, technical evidence, interim relief
- Applicable to all commercial disputes
- Flexibility
 - Pre-structure entire proceeding
 - For most part can be modified by arrangement between mediator or arbitrator and parties
- For domestic and international disputes
 - Accommodating different legal/procedural traditions

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

Principal steps in a WIPO Mediation

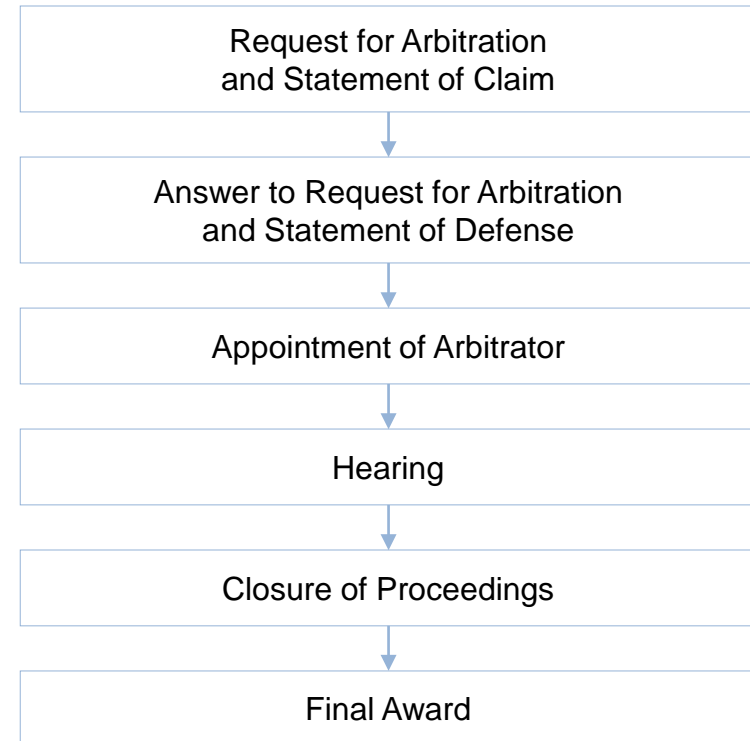


Principal steps in a WIPO Arbitration

WIPO Arbitration



WIPO Expedited Arbitration



- One exchange of pleadings
- Shorter time limits
- Sole arbitrator
- Shorter hearings
- Fixed fees

Mediation and arbitration compared

	Mediation	Arbitration
Parties	Either party may unilaterally withdraw from the procedure.	Once the parties have validly agreed to submit a dispute to arbitration, neither party may unilaterally withdraw from the procedure.
Mediator/ arbitrator	The mediator functions as a “catalyst” or settlement facilitator, but cannot impose a settlement on the parties.	The arbitrator(s) (“tribunal”) has the authority to decide the case in a final award.
Scope	Any settlement is agreed by the parties and is based on the parties’ interests, which may be broader than their legal positions.	The tribunal addresses the parties’ legal positions on the basis of the applicable substantive law.
Outcome	Any settlement agreement is binding between the parties as a matter of contract law.	Awards are legally binding on the parties, final and enforceable internationally.

WIPO Center's ADR cases

Areas of disputes

Copyright

Art
Broadcasting
Collective Management
Entertainment
Film and Media
Infringements
TV Formats

Commercial

Design
Distribution
Energy
Franchising
Marketing
Sports

Trademarks

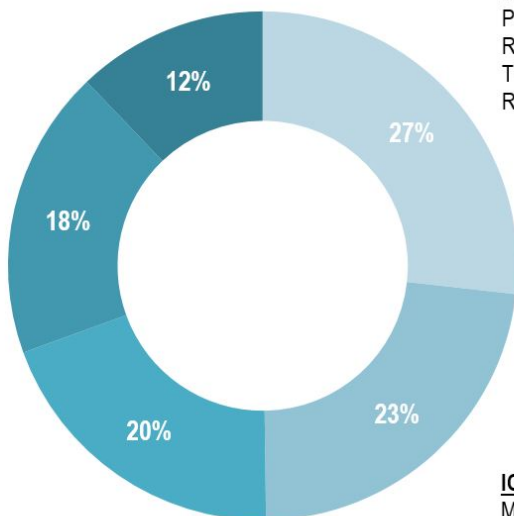
Coexistence
Infringements
Licenses
Oppositions
Revocations

Patents

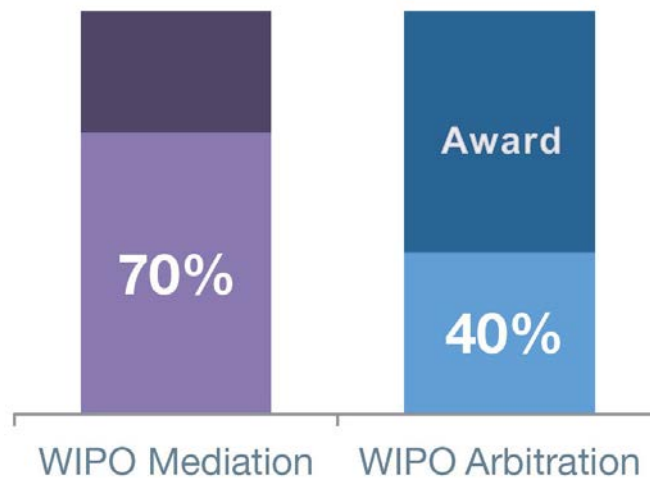
Cross-licensing
Infringements
Licenses
Ownership
Patent Pools
R&D / Tech
Transfer
Royalty Payment

ICT

Mobile Apps
Outsourcing
Systems Integration
Software Development
Software Licensing
Telecommunications



Settlement rates



WIPO ADR for sports-related disputes

■ Areas of dispute

- advertising
- broadcasting rights
- copyright and related rights
- event management
- image rights
- industrial design rights
- marketing transactions
- merchandising agreements
- patents relating to sports equipment
- product development
- publishing
- software
- sponsorship agreements
- sports betting and gaming
- sports business contracts
- sports online streaming



WIPO ADR for sports-related disputes

■ Parties involved

- agents
- athletes
- broadcasters
- clubs
- coaches
- event organizers
- inventors
- non-profit foundations
- service providers
- software developers
- sponsors
- sports goods manufacturers
- sports organizations and federations
- telecommunication providers
- television and media companies



Case example: Broadcasting dispute

- WIPO Arbitration
- TV distribution company and international sports federation
- Broadcast rights distribution agreement
- Exclusive broadcast of sports competition to TV audiences in Asia-Pacific
- Damages for breach of contract

Case example: Patent dispute

- WIPO Expedited Arbitration
- Asian inventor and US manufacturer
- Exclusive licensing agreement
- US and European patents for sports goods
- Payment of royalties
- Protection of business secrets

Case example: Trademark and copyright dispute

- WIPO Mediation
- European companies
- Exclusive trademark and copyright licensing agreement for club sponsorship
- Breach of contract
- Lack of commercial use of the licensed trademark
- Payment of royalties

Case example: Trademark dispute

- WIPO Expedited Arbitration
- European companies
- Trademark licensing agreement for sports goods
- Breach of contract
- Payment of royalties and damages

WIPO eADR for America's Cup

- 36th edition of the America's Cup sailing race series
- America's Cup Arbitration Panel (ACAP)
- Tailored version of WIPO eADR case administration platform

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.



**300+ signatories
from over
80 countries**



Join the Pledge!

WIPO | ADR
Arbitration
and Mediation
Center

Tackling cybersquatting: the Uniform Domain Name Dispute Resolution Policy (UDRP)

- 1999: WIPO-created international ADR procedure
- Allows trademark owners to resolve "clear-cut" cases of abusive domain name registration and use ("cybersquatting")
- Operates outside the courts, but preserves court option
- Applies via mandatory domain name registration conditions
- Applies to all international domains "old" (.com, etc.) and "new"
- Also available for over 75 country-code domains

Why do brand owners choose the UDRP?

- Significantly quicker and cheaper than court litigation
 - Two-month average; fixed fees (USD 1,500)
- Predictable criteria and results
- Decision (transfer) implemented directly by registrar

WIPO domain name cases at a glance

- 20 years' experience as global leader
- 43,000+ cases covering 80,000+ domain names
 - 2018 total: 3,447 cases
- Parties based in 177 countries
- Cases in 21 languages to date
- Paperless filing through WIPO eUDRP

Sports-related WIPO domain name cases

- International Olympic Committee, FIFA, UEFA, NBA, FIBA, NFL, NCAA, PGA, Roland Garros, Wimbledon, Ryder Cup, Formula One, Wembley Stadium, London Marathon
- Barcelona FC, Real Madrid, Juventus, Manchester United, Liverpool, Bayern Munich, Benfica
- New York Knicks, Houston Rockets, Arizona Cardinals, Green Bay Packers, Kansas City Chiefs, Carolina Panthers
- Lionel Messi, Ronaldinho, Pele, Wayne Rooney, Serena and Venus Williams, Mika Häkkinen
- Adidas, Columbia, Mizuno, Nike, Rebook, Salomon

Key WIPO UDRP resources

- WIPO Guide to the UDRP
- Model pleadings (complaint and response)
- Legal Index of UDRP Decisions
- WIPO Jurisprudential Overview of Selected UDRP Questions



**WIPO Overview of WIPO Panel Views
on Selected UDRP Questions,
Third Edition (“WIPO Overview 3.0”)**

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