

GUIDANCE NOTES for WIPO Mediation and Expedited Arbitration in Disputes Related to IIPCC IKR Service and Software License Agreements

I. General Information on WIPO Mediation and Expedited Arbitration

These guidance notes are produced for parties involved in disputes that wish to use WIPO Mediation and Expedited Arbitration services.

The WIPO Center is a neutral and independent dispute resolution provider. As such it administers, on a non-profit fee basis mediation and arbitration procedures, such as mediation, arbitration and expedited arbitration.

These procedures allow parties to resolve their dispute in a time, cost efficient and confidential manner outside of court. A detailed explanation of the different procedures can be viewed on our website at: www.wipo.int/amc/en/center/wipo-adr.html.

- Mediation: is a non-binding procedure in which a neutral intermediary, the mediator, assists the parties in reaching a settlement of the dispute.
- Expedited Arbitration: is a neutral procedure in which the dispute is submitted to one arbitrator who makes a binding decision on the dispute rapidly at a reduced cost.

Experience shows that some three out of four WIPO mediation cases are settled and that more than half of WIPO arbitration cases settle, while the rest of arbitrations conclude with a final award.

These beneficial results demonstrate a good business case for disputing parties to combine mediation with arbitration. Phase one is an attempt to settle the dispute through mediation. Phase two, should settlement not be reached, is to submit the dispute for expedited arbitration.

All WIPO procedures are consensual. This means that for such a procedure to commence, both parties would need to agree to refer their dispute to mediation and expedited arbitration. Consensual party agreement is reached by both parties signing a submission agreement outlining the dispute they wish to resolve through such a procedure. Model submission agreements are set out under Section IV of these Guidance Notes. These submission agreements and others are also available online at: <http://www.wipo.int/amc/en/mediation/contract-clauses/index.html>. All agreements may be adjusted as necessary to suit.

Once both parties have signed and submitted their selected submission agreement to the WIPO Center, suitable mediators, with expertise in IP disputes, will be proposed. These mediators are selected from the WIPO Centers' list of neutrals.

For further information, you may also refer to the WIPO Mediation Guide at: http://www.wipo.int/freepublications/en/arbitration/449/wipo_pub_449.pdf.

II. What are the Steps in WIPO Mediation and Expedited Arbitration?

1. Unilateral Request for Mediation Pursuant to the Article 4 of the WIPO Mediation Rules

In the absence of a Mediation Agreement, an IKR user that wishes to propose submitting a dispute to mediation shall submit a Request for Mediation in writing to the WIPO Center pursuant to the Article 4 of the WIPO Mediation Rules. The IKR user shall at the same time send a copy of the Request for Mediation to the other party. The Request for Mediation shall include:

- (i) the names, addresses and telephone, e-mail or other communication references of the parties to the dispute and of the representative of the party filing the Request for Mediation
- (ii) a brief statement of the nature of the dispute

Upon request by the IKR user, the WIPO Center may appoint an external neutral to assist the parties in considering the Request for Mediation. The external neutral may act as mediator in the dispute provided all parties agree.

2. Consensual submission agreement

Should the recipient party agree to use WIPO'S mediation services, it shall sign the submission agreement (attached to the Intervention Letter) and send it to the WIPO Center at arbiter.mail@wipo.int.

3. Mediation

The requesting party submits a Request for Mediation to the WIPO Center, in which it has the opportunity to explain the dispute. At that point the requesting party pays the administration fee to the WIPO Center (see Schedule of Fees set out in Section III of these Guidance Notes).

On receipt of payment, the mediation procedure commences and the WIPO Center will administer the mediation under the WIPO Mediation Rules (available at: <http://www.wipo.int/amc/en/mediation/rules/>).

Ultimately, the costs of the mediation (including the fees for the mediator) shall be borne in equal shares by the parties, unless they agree otherwise.

4. Conclusion of Mediation

If the parties reach a settlement agreement, the mediation is terminated and the case closed.

If the parties do not reach a settlement agreement the mediation is either terminated, or the dispute is submitted to the expedited arbitration if the parties agree so in a submission agreement.

5. Expedited Arbitration

The IKR user submits a Request for Expedited Arbitration to the WIPO Center, and the Statement of Claim. At that point the registered IKR user pays the administration fee (see Schedule of Fees set out in Section III of these Guidance Notes).

Once the arbitration has started, the WIPO Center will ask the parties to each deposit an equal amount as an advance for the **costs of arbitration** (including in particular the arbitrator's fees). Ultimately, the decision on the costs of the arbitration will be made by the arbitrator, subject to any agreement by the parties.

The WIPO Center will administer the expedited arbitration procedure under the WIPO Expedited Arbitration Rules (available at: <http://www.wipo.int/amc/en/arbitration/expedited-rules/>).

6. Conclusion of Expedited Arbitration

The expedited arbitration normally concludes with a final and binding award. However, in arbitration also, the parties retain the possibility to settle their dispute before an award is rendered.

III. Discounted WIPO Fees and Costs for IKR Users

A 25% reduction on the Center's registration and administration fees applies in cases where IKR users are involved. The standard WIPO Schedules of Fees and Costs for Mediation is available at <http://www.wipo.int/amc/en/mediation/fees/> and for Expedited Arbitration is available at (<http://www.wipo.int/amc/en/arbitration/fees/>).

IV. Selected WIPO Submission Agreement Models

Option 1: 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: _____

Option 2: WIPO Mediation Followed, in the Absence of a Settlement, by WIPO Expedited Arbitration

We, the undersigned parties, hereby agree to submit the following dispute to mediation in accordance with the WIPO Mediation Rules.

[Enter brief description of the dispute]

The place of mediation shall be [specify place]. The language to be used in the mediation shall be [specify language].

We further agree that, if, and to the extent that, the dispute 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 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. The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute referred to arbitration shall be decided in accordance with the law of [specify jurisdiction].

Name of Party 1:

Name of Party 2:

Date:

Date:

Signature:

Signature: