

# Alternative Dispute Resolution (ADR) Mechanisms for Copyright and Content- Related Disputes

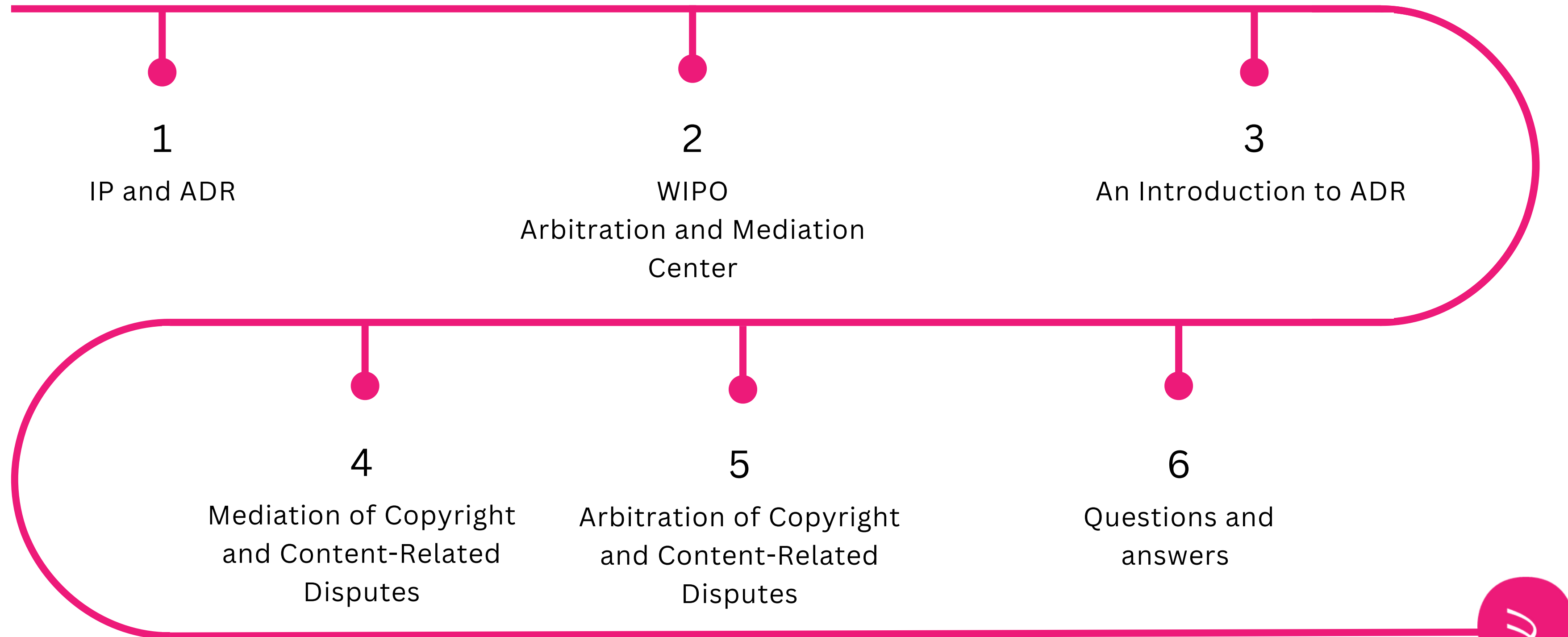


Oscar Suárez, WIPO Arbitration and Mediation Center  
Alexia Gkoritsa, WIPO Arbitration and Mediation Center

**HCO-WIPO Event**  
**June 8, 2023**

**WIPO | ADR**

# Today



# 1. IP and ADR



# Why?

- ✔ Costs and Time
- ✔ Internationalization of IP
- ✔ Technical and specialized
- ✔ Short product and market cycles
- ✔ Confidential nature



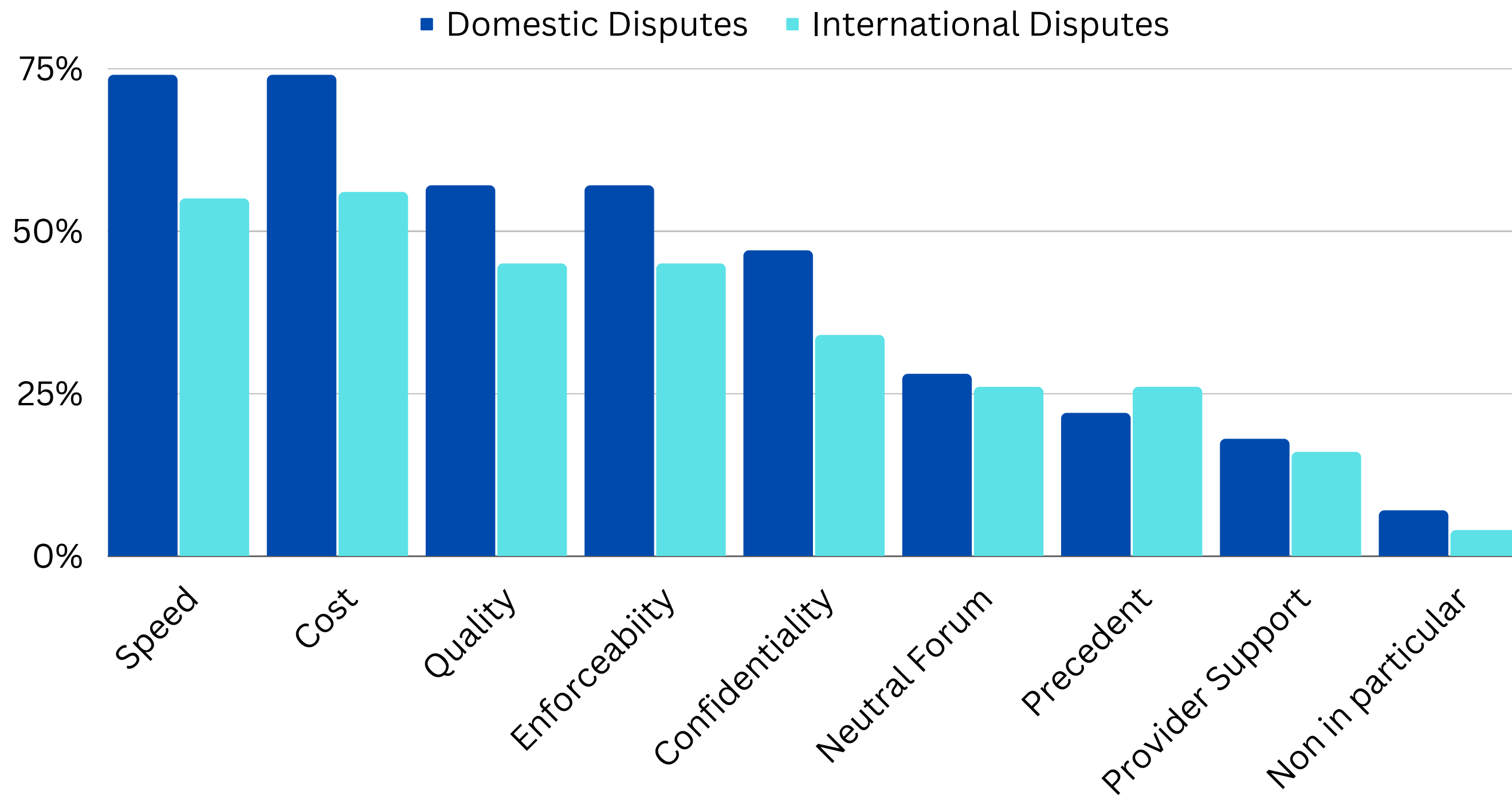


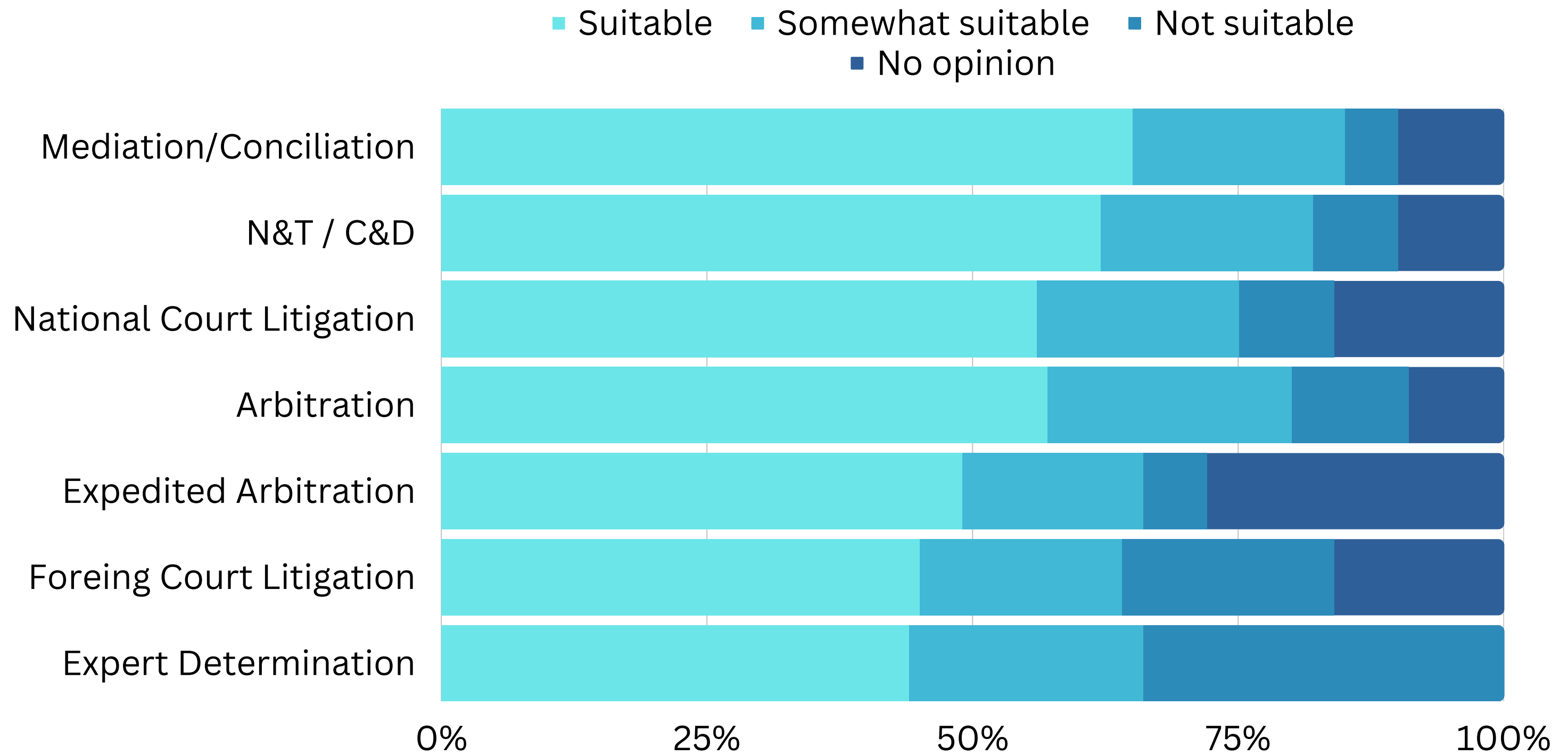


More than 1,000 responses from stakeholders in 129 countries.

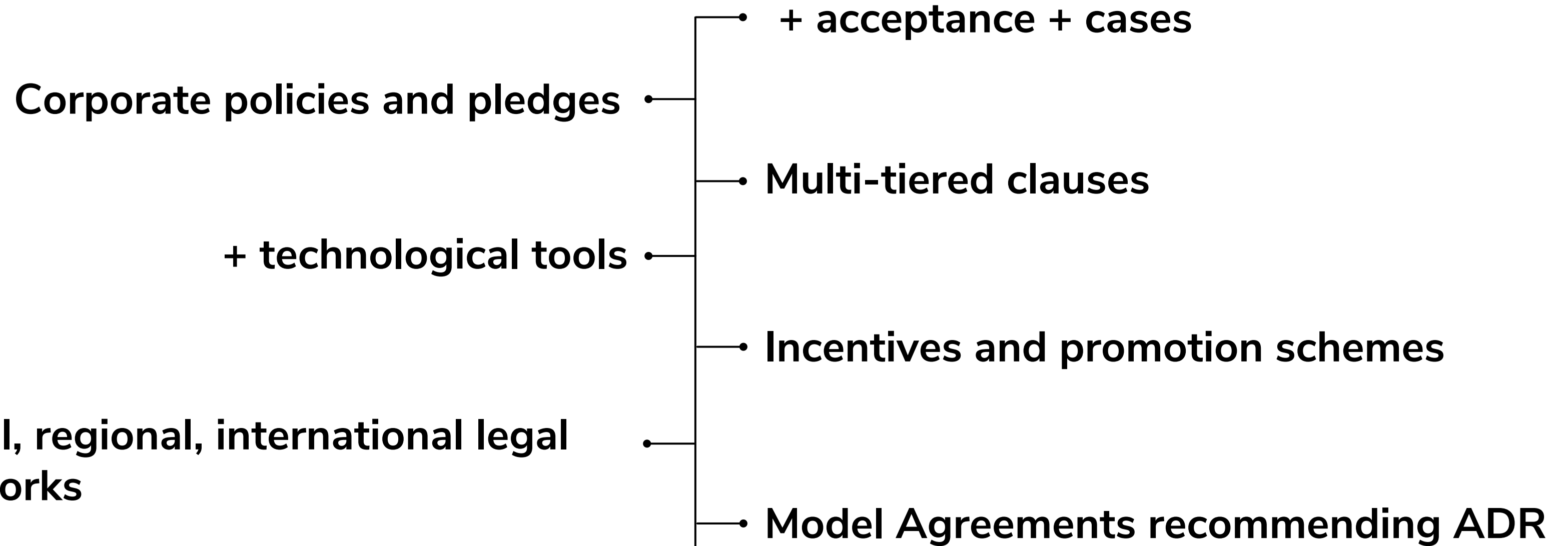
Current use of ADR for B2B disputes related to digital copyright and digital content







# Recent Developments



# WIPO ADR Rules

[www.wipo.int/amc/en/rules/](http://www.wipo.int/amc/en/rules/)

- ✓ IP and technology specific elements
- ✓ All commercial disputes
- ✓ Flexibility
- ✓ Domestic and international disputes
- ✓ Singapore Mediation Convention
- ✓ WIPO eADR
- ✓ Disclosure of third party funding



# Alternative Dispute Resolution



**Mediation**

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**Arbitration  
(Expedited)**

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**Expert  
Determination**

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**VOLUNTARY**



## 2. WIPO Arbitration and Mediation Center







# World Intellectual Property Organization (WIPO)

Promotes innovation and creativity through a balanced and effective international IP system

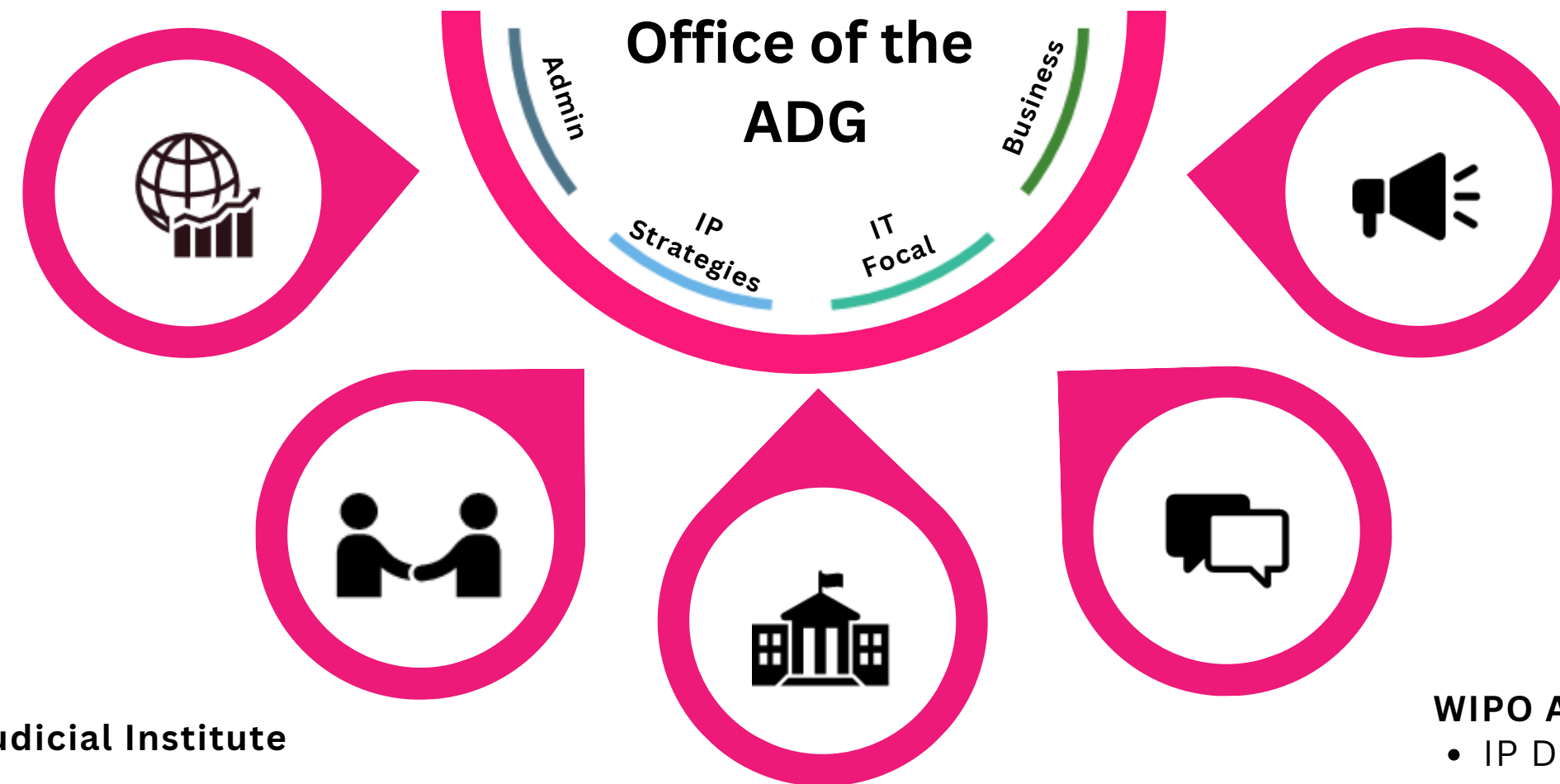
IP and Innovation Ecosystems Sector

- 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





# IP & Innovation Ecosystems Sector (IES)



## Department for Economics and Data Analytics

- GII, WIPR, WIPI
- IP statistics and data analytics
- Economic research (Creative Economy & Innovation Economy)

## IP for Business Division

- Develop Tools and Materials for Businesses
- Work with SMEs Intermediaries and National IP offices
- IP Management Clinics
- Inventor Assistance Program
- Patent Drafting Programs
- IP Financing & valuation
- IP Commercialization

## WIPO Judicial Institute

- Judicial dialogue
- Judicial resources
- Judicial capacity building
- WIPO Lex – laws, treaties, judgements

## IP for Innovators Department

- TISCs/TT structures
- Digital Support (WIPO INSPIRE)
- Technology Transfer
- Patent Analytics
- Institutional IP Policies
- IP Commercialization (universities & R&D institutions)

## WIPO Arbitration and Mediation Center

- IP Disputes
- Domain Name Disputes
- ADR Collaborations
- ccTLD Collaborations





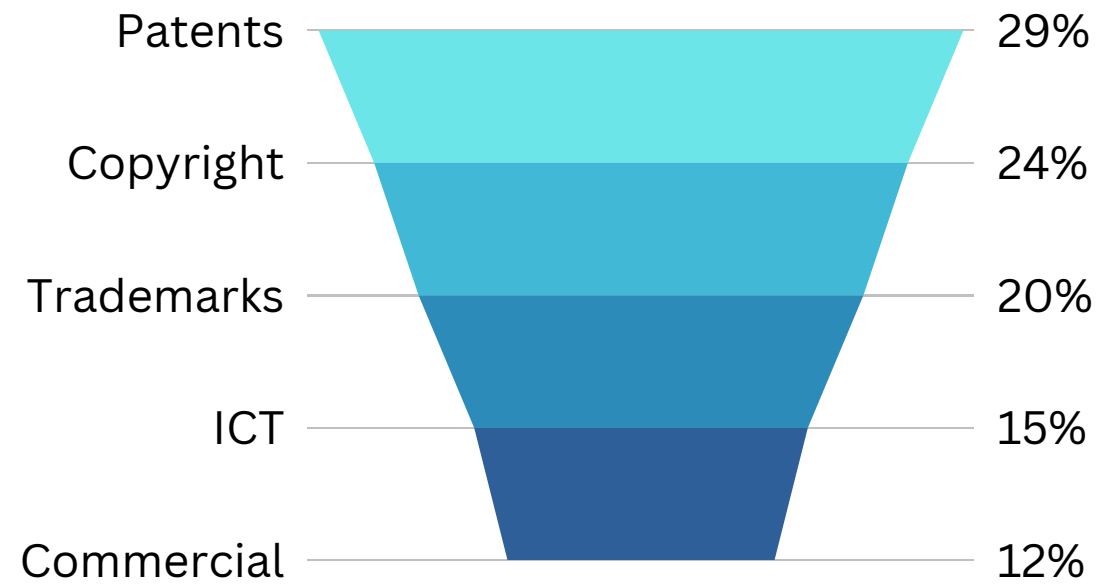
# WIPO Arbitration and Mediation Center

- IP- and innovation-related commercial disputes
- Global, neutral and specialized
- Users from across the world; increased use by innovators and SMEs
- Mediation, arbitration, expert determination and domain name disputes

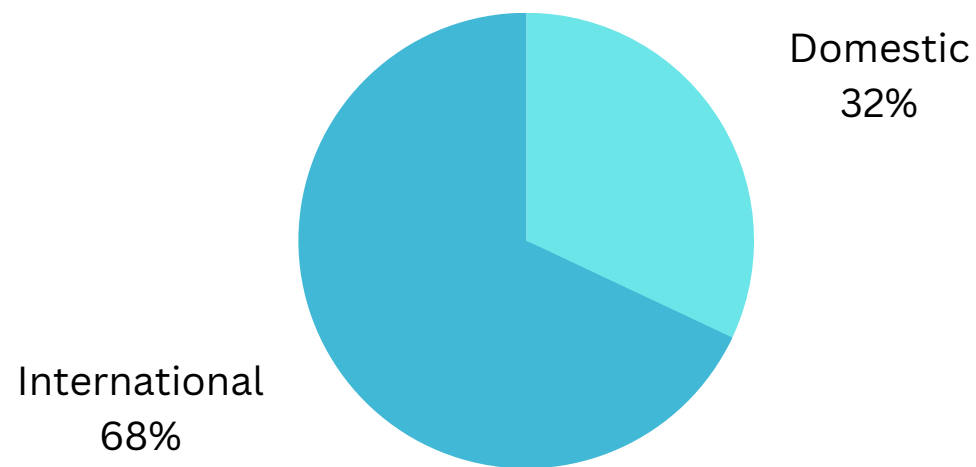
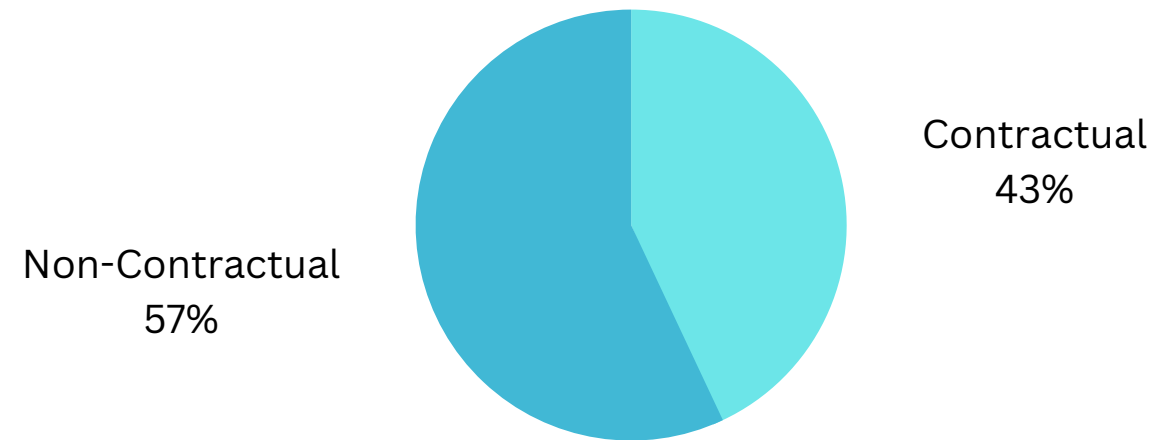
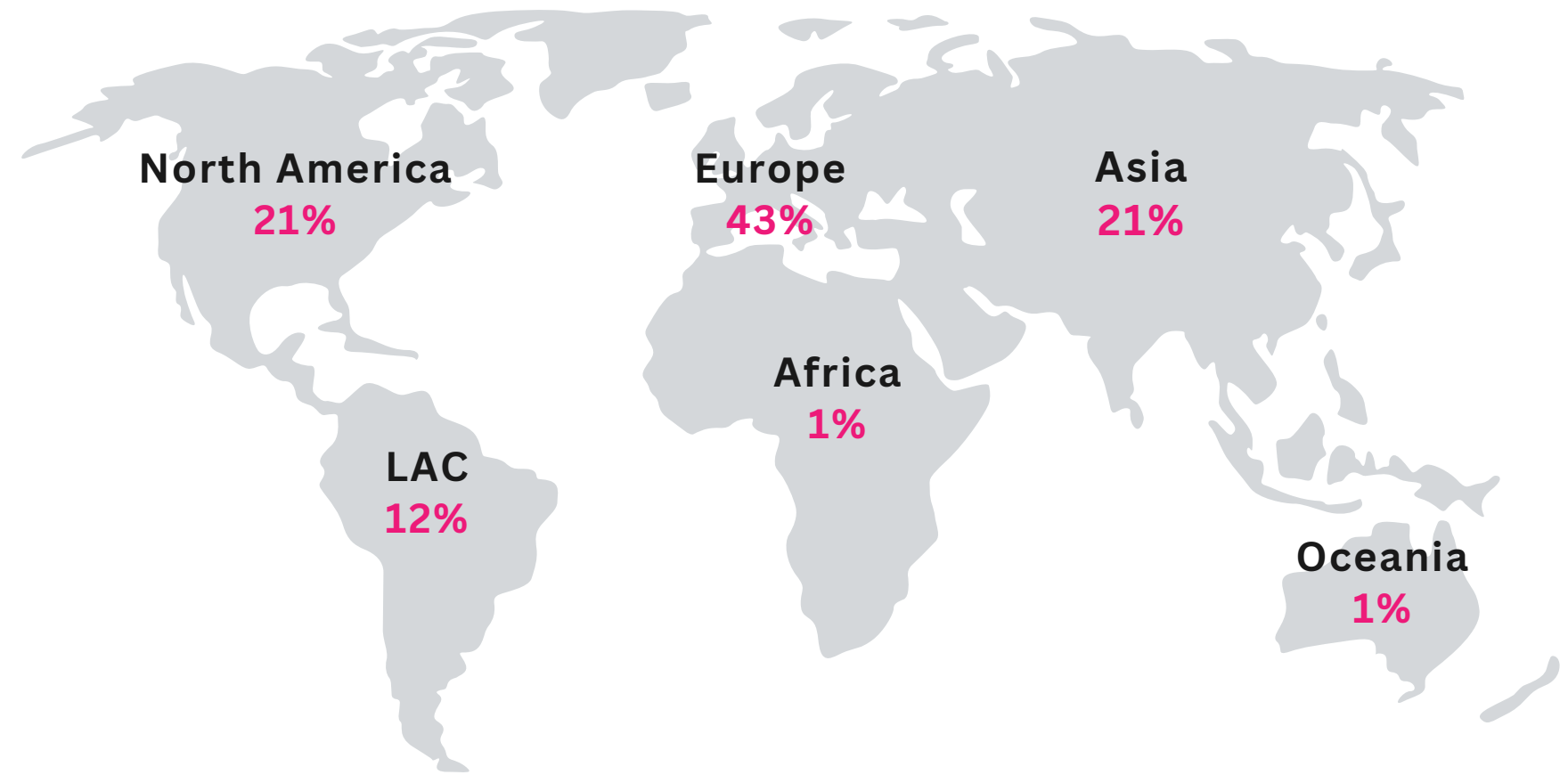


# WIPO ADR Caseload

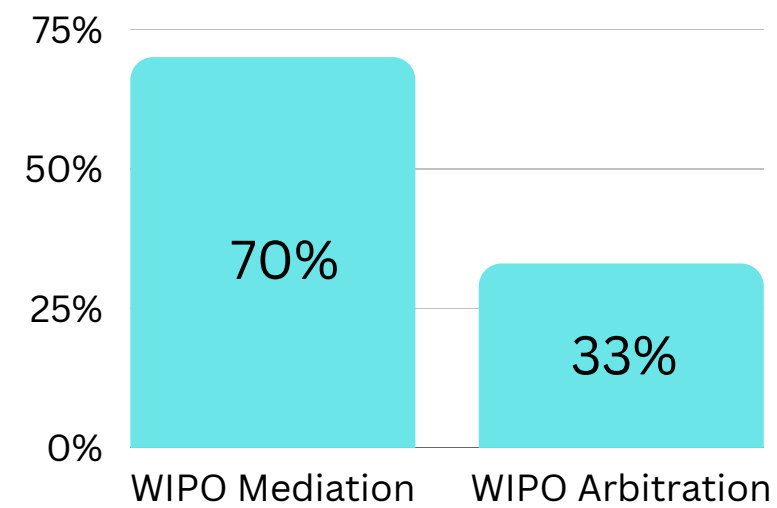
## Legal Areas



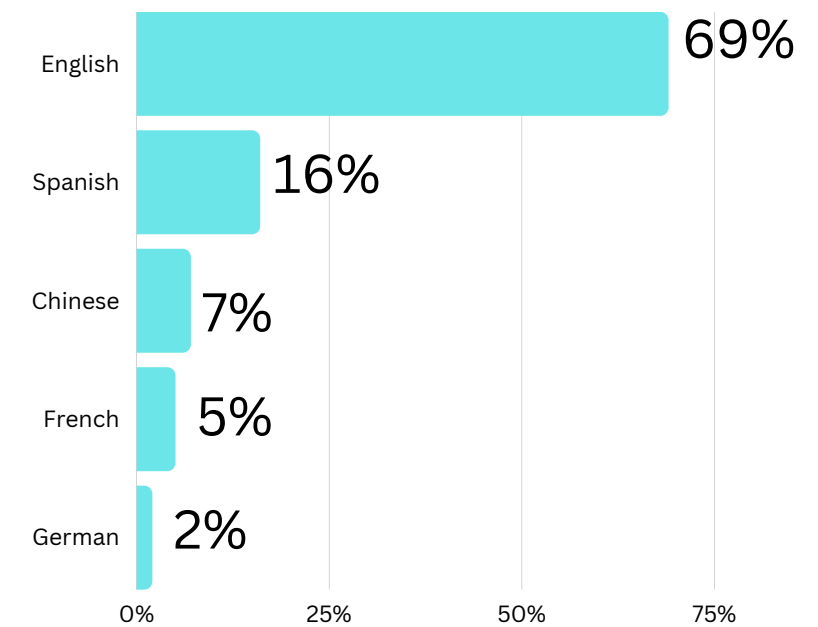
## Party Location



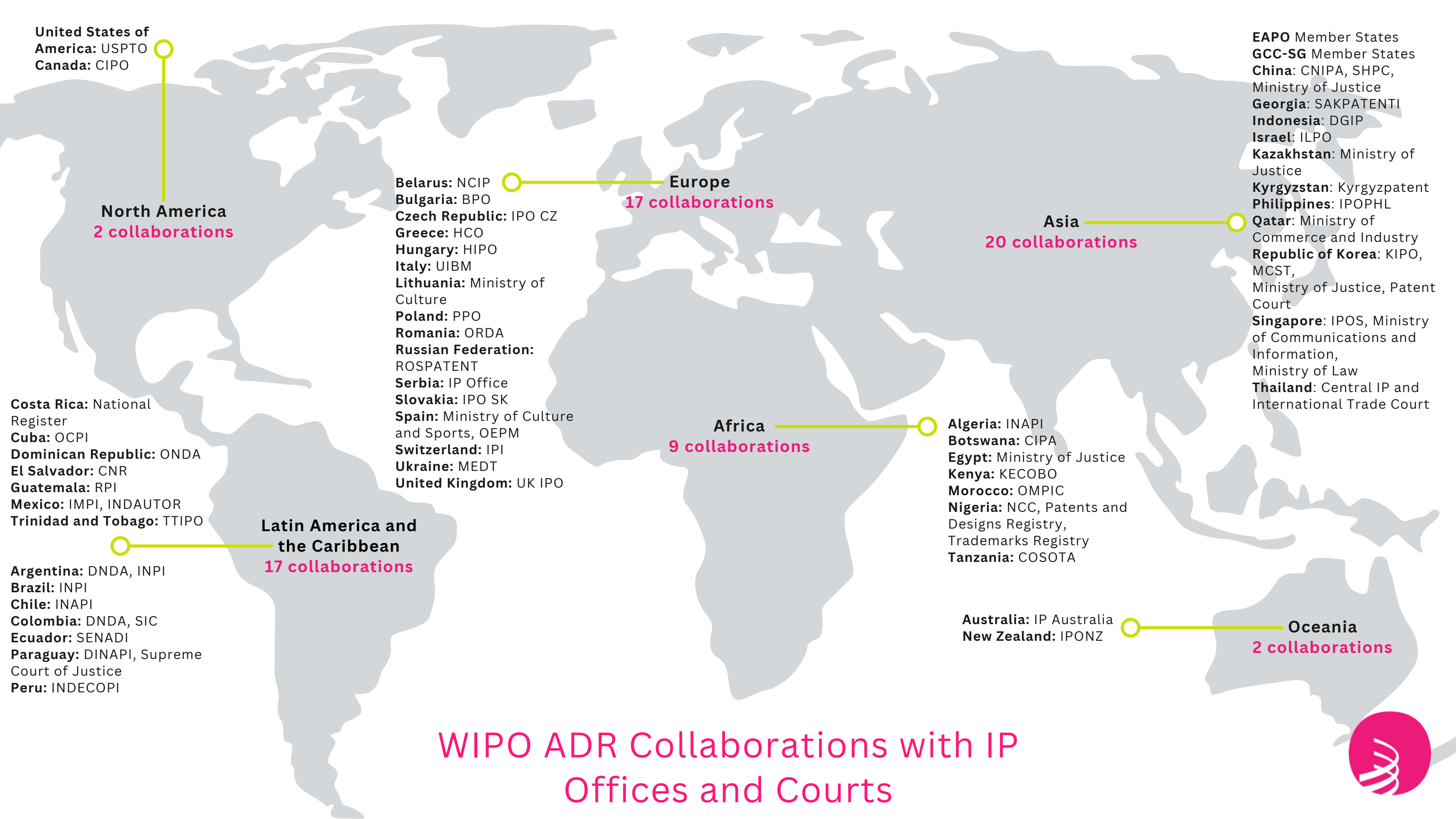
## Settlement rate



## Language







# WIPO ADR Collaborations with IP Offices and Courts



# 3. An Introduction to ADR





# Alternative Dispute Resolution (ADR) Options

Mediation

Arbitration

Expert Determination

etc.

Consent





# 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





# Expert Determination

Consensual procedure

Often used in matters of a technical/specialized nature

Parties submit a specific matter (e.g., a technical question) to one or more experts

The determination of the expert is binding, unless the parties agree otherwise




# Routes to WIPO ADR

 ADR contract clause

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WIPO model clauses

 ADR submission agreement

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common in non-contractual disputes

 Unilateral request

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when there is no party agreement



# What types of disputes can be subject to ADR?



## Contractual

There is a (commercial) contract between the parties



## Non-contractual

There is no contract between the parties





## Audiovisual works

Co-production of film  
Broadcasting of sports competitions  
Development of pilot for TV reality show  
Royalties  
Online copyright infringement



## Music

Publishing associations  
CMOs  
Royalties  
Copyright infringement on online platforms



## Photography

Publication of photographs online without authorization or payment



## Social media

User-uploaded content  
User-generated content



## Software

Software licensing agreements



## Video Games

Copyright over scenario, characters, software, etc.  
Online streaming of esports competitions

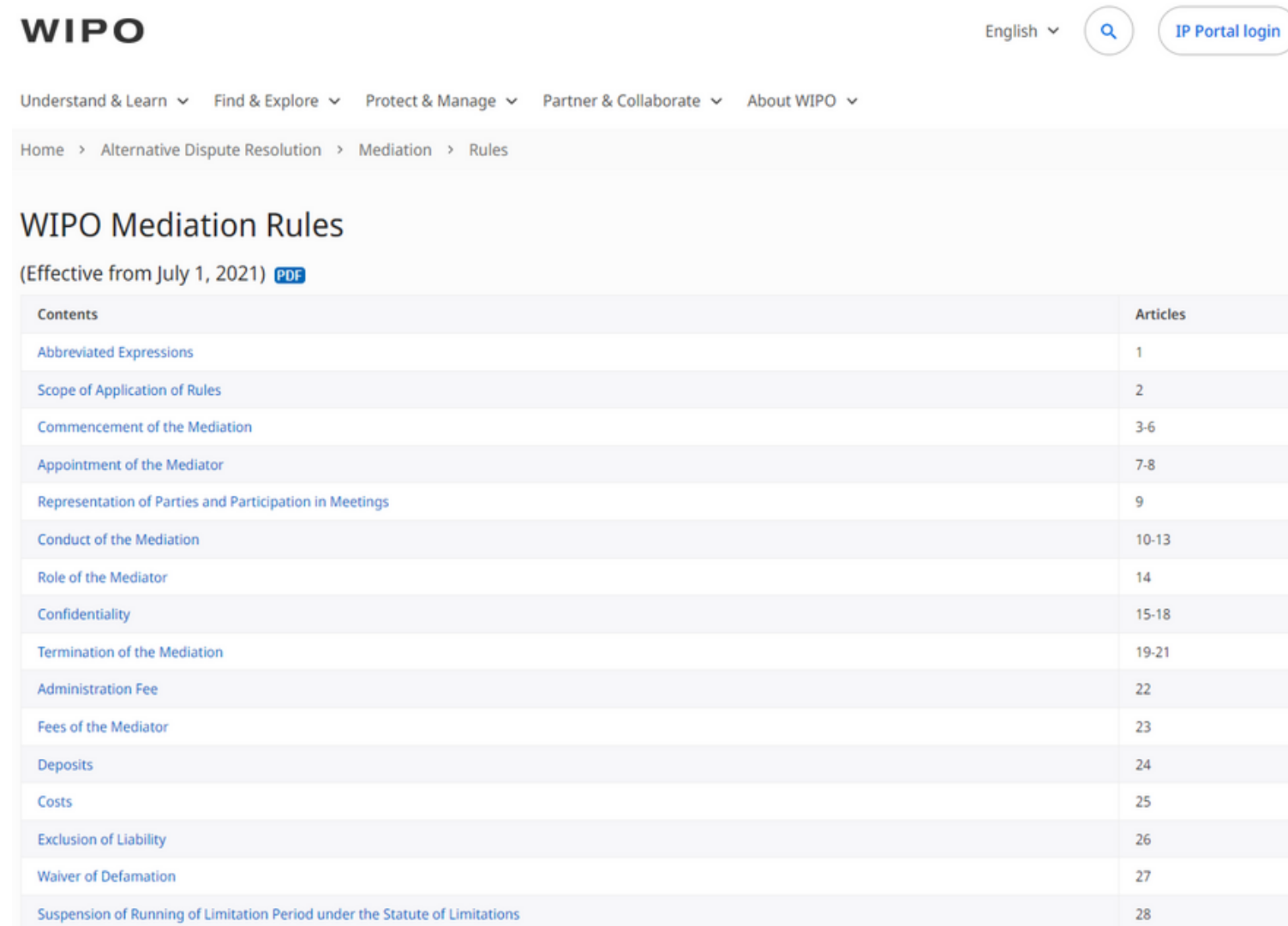


# 4. Mediation of Copyright and Content-Related Disputes



# WIPO Mediation Rules

Effective from July 1, 2021



The screenshot shows the WIPO website header with the logo, language selection (English), and a search bar. Below the header is a navigation menu with categories like 'Understand & Learn', 'Find & Explore', 'Protect & Manage', 'Partner & Collaborate', and 'About WIPO'. The main content area displays the breadcrumb path 'Home > Alternative Dispute Resolution > Mediation > Rules' and the title 'WIPO Mediation Rules (Effective from July 1, 2021)'. A table of contents follows, listing various articles and their corresponding page numbers.

Contents	Articles
<a href="#">Abbreviated Expressions</a>	1
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<a href="#">Commencement of the Mediation</a>	3-6
<a href="#">Appointment of the Mediator</a>	7-8
<a href="#">Representation of Parties and Participation in Meetings</a>	9
<a href="#">Conduct of the Mediation</a>	10-13
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Commercial disputes



Domestic and international disputes



IP-specific elements, e.g., confidentiality



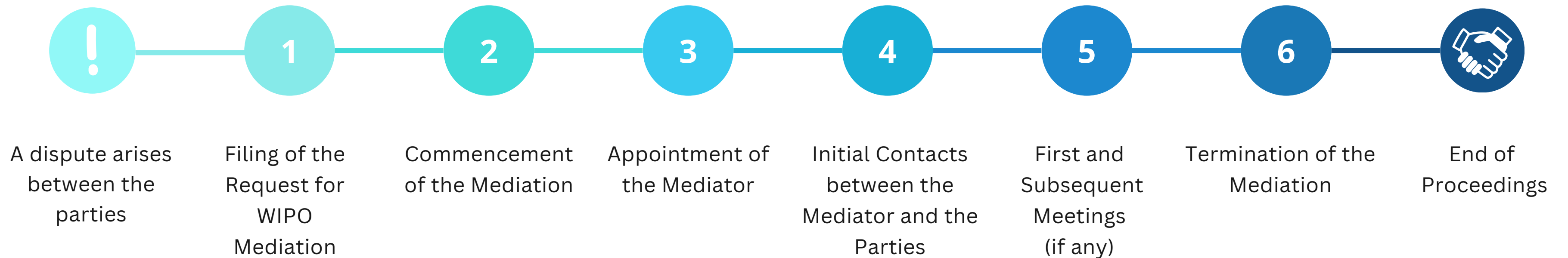
Flexibility



70% settlement rate in WIPO mediations



# WIPO Mediation





# Request for WIPO Mediation

## Request for WIPO Mediation

This electronic filing form allows you to complete and submit a Request under Article 3 of the WIPO Mediation Rules to the WIPO Arbitration and Mediation Center. Upon submission, a copy of this Request will be sent to the Responding Party.

Should you prefer to file a Request for WIPO Mediation without using this electronic form, please see the WIPO Center's Case Filing Guidelines and additional online resources for WIPO Mediation.

Information about the processing of personal data by the WIPO Center is [available here](#).

Mandatory fields are marked as (\*).

Name [Requesting Party] *	Name [Responding Party] *
Address *	Address *
Telephone	Telephone
E-mail *	E-mail *





# Unilateral Request for WIPO Mediation

## Unilateral Request for WIPO Mediation

This electronic filing form allows you to complete and submit a Unilateral Request under [Article 4](#) of the WIPO Mediation Rules to the WIPO Arbitration and Mediation Center. Upon submission, a copy of this Request will be sent to the Responding Party.

The filing of a Unilateral Request for Mediation is not subject to an administration fee. If the parties agree to continue with the mediation process, the administration fee required by [Article 22](#) of the WIPO Mediation Rules and the [Schedule of Fees and Costs](#) will be applicable. Should you prefer to file a Unilateral Request for WIPO Mediation without using this electronic form, please see the WIPO Center's [Case Filing Guidelines](#) and [additional online resources](#) for WIPO Unilateral Mediation.

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Mandatory fields are marked as (\*).

Name [Requesting Party] *	Name [Responding Party]
Address *	Address
Telephone	Telephone
E-mail *	E-mail



# Role of the Mediator



- ✔ Promotes settlement  
in any manner that they believe to be appropriate
- ✘ Does not impose a settlement  
Neither judge nor adjudicator
- ✔ Neither judge nor adjudicator  
Expert Determination, Arbitration, etc.

# Case studies

## A Copyright Dispute involving Collecting Societies in the TV Broadcasting Industry

**16 parties:** 5 collecting societies and a radio and television association (joined by 11 national and international broadcasters)

Dispute: remuneration offered by cable operators to national and foreign TV broadcasters for the time-shifted viewing (**replay TV/catch-up TV**)

### **Submission agreement for WIPO mediation**

Parties agreed on an **experienced** Mediator and a copyright collective management Expert

Several **preparatory telephone conferences** with the parties

### **Two mediation sessions** with Mediator and Expert **in 2 languages**

Signed term sheet, followed by drafting and negotiation of a **full Settlement Agreement** within 9 months. Settlement Agreement included renegotiation of the broadcasting tariffs



# Case studies

## A Co-Mediation of a Patent Dispute

Submission agreement for WIPO mediation **in the context of filing for court and arbitration proceedings**

**Patent dispute** between European Parties in the transportation industry

**Co-mediation** (one mediator being a patent specialist)

**Individual preparatory meetings** with each Party

Two mediation sessions followed by individual caucuses and a third mediation session

Meetings conducted **online**

Signed settlement agreement **in 5 months**



# Case studies

## A Patent Dispute in the Media and Entertainment Industry

Two foreign companies specializing in **augmented reality technology for the media and entertainment industries**

Dispute relating to ownership and **infringement of patents and copyrights**: diversion by one Party of the technology and of the layouts developed and created by the other Party

### **WIPO Mediation**

**WIPO Center provided shortlist of mediators.** Appointed mediator: expertise in IP law, neutrality, intercultural awareness, emotional competence and legal language skills

**One-day mediation session in 2 languages**

**Continued assistance of the Parties and their lawyers** until Settlement Agreement was reached, drafted and signed



# Useful Links



## **Guide to WIPO Mediation**

[www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_449\\_2018.pdf](http://www.wipo.int/edocs/pubdocs/en/wipo_pub_449_2018.pdf)

## **WIPO Mediation Rules**

[www.wipo.int/amc/en/mediation/rules](http://www.wipo.int/amc/en/mediation/rules)

## **WIPO Mediation case examples**

[www.wipo.int/amc/en/mediation/case-example.html](http://www.wipo.int/amc/en/mediation/case-example.html)

## **General information on mediation**

[www.wipo.int/amc/en/mediation](http://www.wipo.int/amc/en/mediation)

## **WIPO Checklist for the Online Conduct of Mediation and Arbitration Proceedings**

[www.wipo.int/amc/en/eadr/checklist/index.html](http://www.wipo.int/amc/en/eadr/checklist/index.html)



# 5. Arbitration of Copyright and Content-Related Disputes



# WIPO Arbitration Rules

Effective from July 1, 2021

**WIPO** English  IP Portal login

Understand & Learn  Find & Explore  Protect & Manage  Partner & Collaborate  About WIPO

Home > Alternative Dispute Resolution > Arbitration > Rules

## WIPO Arbitration Rules

(Effective from July 1, 2021) [PDF](#)

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Scope of Application of Rules

Commencement of the Arbitration

Composition and Establishment of the Tribunal

Conduct of the Arbitration

Closure of Proceedings

Awards and Other Decisions

Fees and Costs

Confidentiality

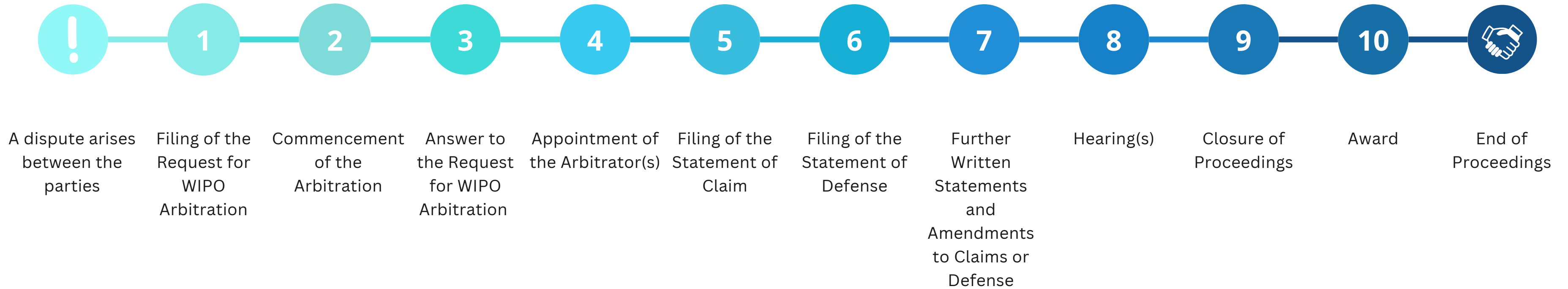
Exclusion of Liability

Waiver of Defamation

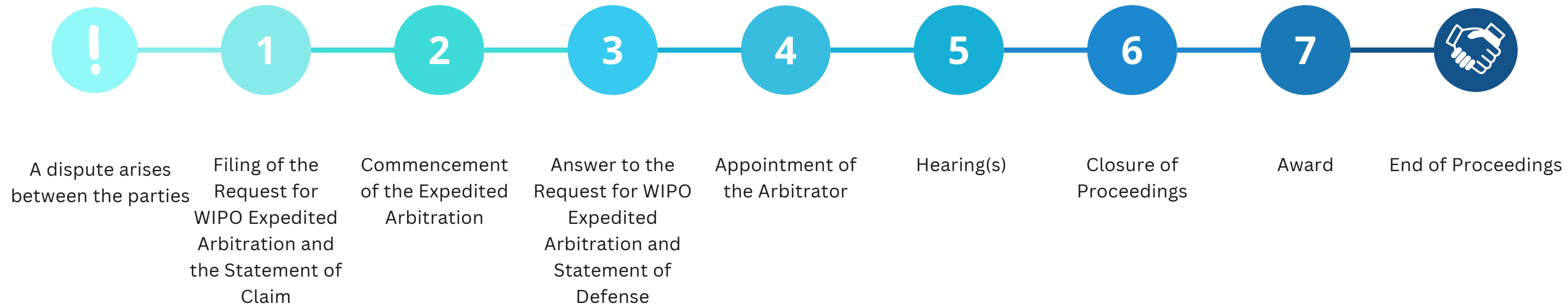




# WIPO Arbitration



# WIPO Expedited Arbitration



# Request for WIPO Arbitration

## Request for WIPO Arbitration

This electronic filing form allows you to complete and submit a Request under [Articles 6 and 9](#) of the WIPO Arbitration Rules to the WIPO Arbitration and Mediation Center. Upon submission, a copy of this Request will be sent to the Respondent(s).

Should you prefer to file a Request for WIPO Arbitration without using this electronic form, please see the WIPO Center's [Case Filing Guidelines](#) and [additional online resources](#) for WIPO Arbitration.

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Mandatory fields are marked as (\*).

Name [Requesting Party] *	Name [Responding Party] *
Address *	Address *
Telephone	Telephone
E-mail *	E-mail *



# Request for WIPO Expedited Arbitration

## Request for WIPO Expedited Arbitration

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Name [Requesting Party] *	Name [Responding Party] *
Address *	Address *
Telephone	Telephone
E-mail *	E-mail *



# Role of the Arbitrator



- Conduct arbitration in such manner as they consider appropriate
- Respect **due process** and ensure each party is given a fair opportunity to present its case
- Ensure that arbitral procedure takes place with **due expedition**
- Organize preparatory conference and set **schedule of proceedings**
- Order interim measures, including injunctions
- Determine **admissibility and relevance of evidence**
- Hold **hearings**
- Render **final award**
- May suggest parties to explore **settlement**

# Case studies

## Broadcast Rights Distribution Agreement Dispute

A TV distribution company requested arbitration in a dispute against an international sports federation based on the WIPO Arbitration Rules pursuant to a broadcast rights distribution agreement. The agreement related to the **exclusive broadcast distribution of sports competitions to television audiences** in Asia and the Pacific regions. The TV distribution company claimed damages for breach of contract.

Following consultations between the parties and the Center, the Center appointed **a sole arbitrator experienced in media and sport issues**. The sole arbitrator considered documentary evidence, held a hearing for the examination of witnesses, and rendered a final award rejecting the claims within a year of the commencement of the arbitration.





# Case studies

## TV Pilot Production Dispute

Two Asian parties and a European party concluded an agreement for the **development of a pilot for a TV reality show**. The Asian parties to the agreement subrogated their position to a Latin-American company.

According to the claimant, after several years of contractual relationship, and several payments done by the Latin-American party, the European party did not fulfill its contractual obligations in delivering the TV pilot on time and under the quality and characteristics established under contract.

Parties included in their original agreement **a clause to WIPO Expedited Arbitration**. Once the request for arbitration was filed, **the WIPO Center helped in the appointment of the sole arbitrator, out of list of experts in arbitration and film and media**.



# Case studies

## Film Co-production Dispute

Two European parties and a Latin-American party entered into **a film co-production agreement for the development of an animated film**. Claimants stated an undue unilateral termination of the agreement by the Defendant. The Defendant's counter-claim stated that they were entitled to the unilateral termination, due to several contractual breaches by the Claimants (e.g., low quality of the materials). **The contract included a WIPO Expedited Arbitration clause.**

The parties nominated a sole arbitrator out of a list of candidates that was prepared by the Center. The proceeding was particularly loaded with procedural incidents, injunctive relief requests and the active involvement of the arbitrator to solve this requests and allow for the proceeding to move along. The Defendants presented a counter-claim memorial. **There was a two-days hearing session**, followed by the issuance of the final award.



# Case studies

## Website Development Dispute

A publishing house entered into a contract with a software company for **the development of a new web presence**. The project had to be completed within one year and **included a clause submitting disputes to WIPO Mediation and, if settlement could not be reached within 60 days, to WIPO Expedited Arbitration.**

After some time, the publishing house was not satisfied with the services delivered by the developer, refused to pay, threatened rescission of the contract and asked for damages. **The publishing house filed a request for mediation.** While the parties failed to reach a settlement, the mediation enabled them to focus the issues that were addressed in the ensuing expedited arbitration proceeding. **Following the termination of the mediation, the publishing house initiated expedited arbitration proceedings.** In the course of the **one-day hearing** the parties expressed their desire to settle their case, asking the arbitrator to prepare a settlement proposal. **The parties accepted the arbitrator's proposal and requested the arbitrator to issue a consent award.**



# Useful Links



## **Guide to WIPO Arbitration**

[www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_919\\_2020.pdf](http://www.wipo.int/edocs/pubdocs/en/wipo_pub_919_2020.pdf)

## **WIPO Arbitration Rules**

[www.wipo.int/amc/en/arbitration/rules/index.html](http://www.wipo.int/amc/en/arbitration/rules/index.html)

## **WIPO Expedited Arbitration Rules**

[www.wipo.int/amc/en/mediation/case-example.html](http://www.wipo.int/amc/en/mediation/case-example.html)

## **WIPO Arbitration case examples**

[www.wipo.int/amc/en/arbitration/case-example.html](http://www.wipo.int/amc/en/arbitration/case-example.html)

## **General information on Arbitration and Expedited Arbitration**

[www.wipo.int/amc/en/arbitration/](http://www.wipo.int/amc/en/arbitration/)





[WIPO Center LinkedIn](#)



[arbiter.mail@wipo.int](mailto:arbiter.mail@wipo.int)



[www.wipo.int/amc](http://www.wipo.int/amc)



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[WIPO Center Webinars](#)





Thank you!

Ευχαριστούμε!



**WIPO | ADR**