

GUIDANCE NOTES for WIPO Alternative Dispute Resolution in Creative Barcode® Disputes

I. General Information on WIPO Alternative Dispute Resolution

These guidance notes are produced for parties involved in disputes that wish to utilize WIPO **Alternative Dispute Resolution** (ADR) services.

The WIPO Center is a neutral and independent dispute resolution provider. As such it administers, on a non-profit fee basis ADR 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.
- **Arbitration:** is a neutral procedure in which the dispute is submitted to one or more arbitrators who make a binding decision on the dispute.
- **Expedited Arbitration:** is an arbitration procedure that is carried out 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 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 creative industries 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 ADR?

1. Action one - Intervention letter issued by the WIPO Center free of charge

A Creative Barcode® registered user that has reason to believe that a breach of Creative Barcode® terms of disclosure and permission based use has occurred, contacts the WIPO Center at arbiter.mail@wipo.int, explaining who it believes breached the terms Creative Barcode® and how such breach occurred.

The Creative Barcode® registered user shall sign the corresponding 'Submission Agreement' (model submission agreements are set out in Section IV of these Guidance Notes), indicating therein that the dispute be resolved through WIPO Mediation or through WIPO Mediation Followed, in the Absence of a Settlement, by WIPO Expedited Arbitration.

The WIPO Center then issues an Intervention letter to the other party (see example attached hereto as Annex). This letter states the allegation of the registered Creative Barcode® user and invites the recipient party to consider resolving the dispute outside of court by utilizing WIPO's ADR services (the WIPO Center attaches the 'Submission Agreement' signed by the registered Creative Barcode® user).

2. Action two - Consensual submission agreement

Should the recipient party agree to use WIPO'S ADR 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. Action three - Mediation

Upon notification of the submission agreement signed by both parties, the registered Creative Barcode® user submits a Request for Mediation to the WIPO Center, in which it has the opportunity to further explain the dispute. At that point the registered Creative Barcode® user 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. Action four - 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. Action five (where applicable) - Expedited Arbitration

The registered Creative Barcode® user submits a Request for Expedited Arbitration to the WIPO Center, and the Statement of Claim. At that point the registered Creative Barcode® 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. Action six - 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.

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III. Discounted WIPO Schedule of Fees and Costs for Creative Barcode® Disputes

Applicable to cases involving a registered Creative Barcode® user, the WIPO Schedule of Fees and Costs for Mediation and Expedited Arbitration set out below represents a substantial party discount on the standard WIPO Schedules of Fees and Costs for Mediation (<http://www.wipo.int/amc/en/mediation/fees/>) and for Expedited Arbitration (<http://www.wipo.int/amc/en/arbitration/fees/>). For a full understanding, please also see the explanatory notes following below table.

(All amounts are in Pound Sterling or United States Dollars and can be paid in either currency)

Type of Fee	Intervention Letter	Mediation	Expedited Arbitration
Administration Fee	free of charge	GBP 500 / USD 800	GBP 1,000 / USD 1,600
Mediator and/or Arbitrator Fees	free of charge	Unless the parties agree otherwise, a rate of GBP 200 / USD 300 per hour as agreed by the Center in consultation with the parties and the mediator, capped at a maximum of GBP 4,000 / USD 6500 .	Unless the parties agree otherwise, a rate of GBP 200 / USD 300 per hour as agreed by the Center in consultation with the parties and the arbitrator, capped at a maximum of GBP 4,000 / USD 6500 .

1. The WIPO Center may set-off all or part of the administration fees paid to it in connection with a WIPO mediation against the administration fees payable to the Center in connection with a WIPO expedited arbitration regarding the same dispute.
2. Prior to the appointment of the mediator or arbitrator, the Center shall fix their hourly fee rate in accordance with the applicable Schedule of Fees and in consultation with the parties and the mediator or arbitrator, taking into consideration in particular the amounts in dispute.
3. In exceptional circumstances, based on such factors as the amounts in dispute, the number of parties, the complexity of the dispute and the status and any special qualifications required of the mediator or arbitrator, and subject to the parties' agreement, the Center may propose to the parties a rate and a maximum cap for the mediator's or arbitrator's fees different from those mentioned in the applicable Schedule of Fees.
4. A mediator or arbitrator shall be required to maintain a detailed and accurate record of the work done and the time spent on the mediation or arbitration. Following the termination of the mediation or arbitration, a copy of such records shall be provided to the parties and the Center, together with the mediator or arbitrator's invoice.

5. For the purposes of calculating the fees, the amount of claims expressed in currencies other than United States dollars shall be converted to amounts expressed in United States dollars on the basis of the official United Nations exchange rate prevailing on the date of submission of the Request for Mediation or Arbitration.
6. For the purpose of calculating the fees, the value of any counterclaim should be added to the amount of the claim.

IV. Selected WIPO Submission Agreement Models

(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.)

Option 1: WIPO Mediation

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].

Name of Party 1:

Name of Party 2:

Date:

Date:

Signature:

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:

Annex

Example Intervention Letter to be sent by the WIPO Arbitration and Mediation Center at the request of registered Creative Barcode® Users

Dear [name of Recipient],

The World Intellectual Property Organization (WIPO) Arbitration and Mediation Center which provides alternative dispute resolution services, including for Creative Barcode® related disputes, has been contacted by [name/company of registered Creative Barcode® user]. would like to resolve through WIPO Mediation [and Expedited Arbitration] a dispute concerning the alleged unauthorized use of their work, as explained in their signed submission agreement, which we attach to this letter.

[Name/company of registered Creative Barcode® user] has indicated that this dispute is in relation to the work [describe e.g. Brand Identity concepts] submitted to you on [insert date] for the purpose of [describe reason e.g. being considered for appointment to undertake commercial design works].

According to [Name/company of registered Creative Barcode® user], the commercial engagement was conducted under Creative Barcode® terms of disclosure and permission based use which state that no element of works submitted, written or visual may be utilized without the express permission of the Creator, [name/company of registered Creative Barcode® user].

[Name/company of registered Creative Barcode® user] has alleged that [name/company of Recipient] is in breach of those terms by utilizing, without authorization, works that remain the sole property of [name/company name of registered Creative Barcode® user] until such time as they are purchased.

WIPO Mediation and Expedited Arbitration services have been established to offer parties an option for resolving disputes in a manner that can be more appropriate, flexible, confidential, cost and time efficient than court litigation.

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.

For more information about the WIPO Center and its procedures, you may wish to consult our website at: www.wipo.int/amc.

Next Options

Should you believe that the WIPO Mediation and Expedited Arbitration service meets your interest, the following steps would apply.

- For further information on the available process, you may wish to consult the Guidance Notes attached hereto.

- If you are interested in resolving the alleged dispute through WIPO Mediation [and Expedited Arbitration], kindly confirm this to us by signing the attached submission agreement and sending it by email to arbiter.mail@wipo.int within 14 working days from the date of this letter.

On receipt of the submission agreement signed by both parties, the WIPO Center would commence a mediation process in accordance with the applicable WIPO Mediation Rules. As a first step, the WIPO Center would propose suitable mediators, with expertise in creative industries related disputes, selected from the WIPO Center's List of Neutrals. In light of the need for efficient dispute resolution, the WIPO Mediation and Expedited Arbitration process for Creative Barcode® related disputes operates on a significantly reduced Schedule of Fees (set out in the attached Guidance Notes).

If you believe that you/your Company is not in breach of Creative Barcode® terms and conditions and do not wish to take part in mediation [and/or expedited arbitration], it would be helpful if you could indicate this to the WIPO Center by email to arbiter.mail@wipo.int within 14 working days from the date of this letter. In that event, the WIPO Center would inform [Name/company of registered Creative Barcode® user] accordingly.

We are available to provide any further procedural guidance you may need and shall keep this matter strictly confidential.

Yours sincerely,

WIPO Arbitration and Mediation Center