

# ALTERNATIVE COPYRIGHT DISPUTE RESOLUTION MECHANISMS IN MEXICO

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# 1. Introduction

## Alternative Dispute-Resolution Mechanisms

Alternative Dispute-Resolution (ADR) are extrajudicial legal instruments directed at entering into agreements of any type regarding a dispute between parties and which involve the resolution of the procedure by an expert in the matter concerned.

- ❖  Establishment of their own rules.
- ❖  Requires the will of the parties concerned.
- ❖  Possibility of defining the dispute.
- ❖  Possibility of ending the dispute, without coercion.

# ADVANTAGES

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- Resolution of the procedure by an expert in the matter concerned

Confidentiality

Celerity



Low cost

- The possibility of defining the dispute and the procedure (capacity of the parties to define a solution)

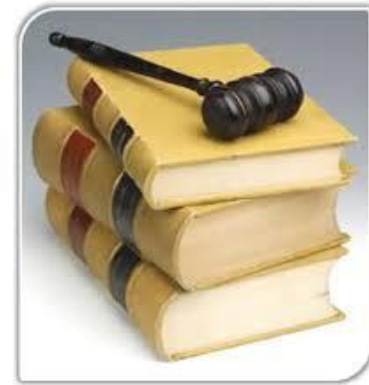
# MEXICAN LEGAL SYSTEM

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## **Exceptions regarding application:**

- Ex officio prosecutable offences
- Disputes arising with regard to family matters
- Issues of policy and social interest



## **Examples of application :**

- Federal Consumer Agency
  - National Commission of Banks and Stocks
  - National Commission of Medical Arbitration
  - National Institute of Copyright
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## 2. ALTERNATIVE DISPUTE-RESOLUTION MECHANISMS IN THE MEXICAN LEGAL SYSTEM

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Various mechanisms have been implemented as part of national legislation. Some schools of thought refer to five types of mechanisms: mediation, conciliation, arbitration, expertise and dispute boards.

- ✓ In the Mexican legal system there are three mechanisms that are widely in practiced:
- Conciliation
  - Mediation
  - Arbitration



## 2.1. CONCILIATION

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The Conciliation mechanism requires that the parties be subject to a third person (neutral or conciliator) in order to decide on any dispute between the parties and provides them with a resolution. The aim is to assist with legal or technical aspects in the matter, in order to reach a satisfactory arrangement.



This practice is referred to as ‘reconciling’ the parties in an attempt to find a common agreement.

## 2.2. MEDIATION

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Mediation is an extrajudicial procedure which involves an impartial third person with legal and technical knowledge in the matter who provides an arrangement and solution to the parties in dispute.

### Function of the mediator

- The mediator invites the parties to a brainstorming session.
- The mediator proposes several possible solutions to the dispute. The parties can adopt or reject the proposals, in case the parties adopt a proposal this solution has the status of an agreement.



## 2.3. ARBITRATION

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Arbitration is an extrajudicial procedure which arises between two or more parties in dispute. The arbitration occurs when the parties submit their dispute and procedure to a neutral third person.

### **PUBLIC**

Institutional



### **PRIVATE**

May be carried out by a single arbitrator or an arbitration panel





# ARBITRATION

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## Arbitrator

The arbitrator, who has knowledge about legal, technical and procedural aspects, provides to the parties a solution to the dispute. The award shall be binding for the parties.



## Main Features of the arbitration award:

- The award can be approved by a judge who can require that it be enforced.
- Once the arbitration award has been confirmed, in case of non-compliance, it may be enforced by the judicial authority.

### 3. ALTERNATIVE COPYRIGHT DISPUTE-RESOLUTION MECHANISMS IN MEXICO

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- ***Federal Copyright Law (1948)***: Under this Law, parties to a given dispute had recourse to the then Department of Copyright in order to resolve disputes related to the exploitation of their works, independently of any other private legal action that they might have brought.

(Article 111)

- ***Federal Copyright Law (1963)***: The Director General was responsible for intervening in disputes concerning copyright and related rights and, if necessary, for reservations concerning rights to exclusive use. That is to say, the parties had recourse to a settlement conference and if, 30 days from the date of the first settlement conference, no conciliatory agreement had been reached, the Director would urge the parties to appoint him as arbitrator.

In such cases, the Director General for Copyright would issue an arbitration award concluding the procedure, and it was for that reason that both conciliation and public arbitration existed.

(Article 133)

# APPLICATION OF COPYRIGHT IN MEXICO

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- *Federal Copyright Law (in force since March 24, 1997)*: specifically governs the procedures of two alternative dispute-resolution mechanisms, the conciliation procedure and arbitration.



# 3.1. ADMINISTRATIVE SETTLEMENT PROCEDURE

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The administrative settlement procedure is a self-applied dispute resolution mechanism, the aim of which is to ensure that the parties achieve conciliation concerning a given dispute related to the rights protected by the Federal Copyright Law (LFDA).

## Legal basis

The settlement procedure is governed by Articles 217 and 218 of the LFDA, as well as by Articles 139 to 142 of its Regulations.

## Determination

The determination is made in the Department of Conciliation of the Legal Department of the INDAUTOR.



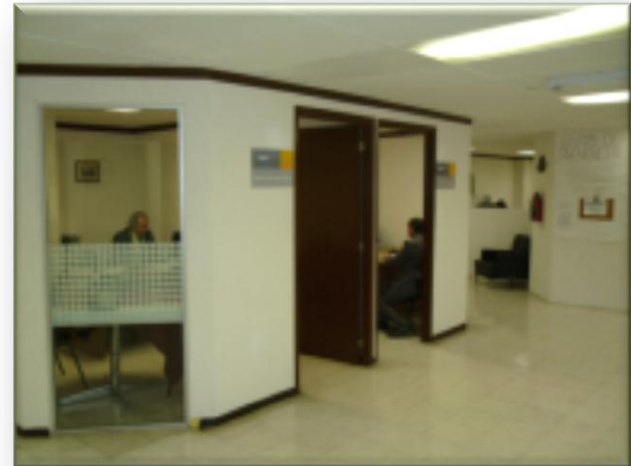
# ADMINISTRATIVE SETTLEMENT PROCEDURE

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## Conciliation Lawyers

The conciliation lawyer promotes and facilitates communication between parties, maintaining an active participation in the process, abstaining from making any determination concerning the case.



## Conciliation Handbook

The Conciliation Lawyer's Handbook is a graphic, detailed and simple tool that is used by conciliation lawyers when determining what course of action to take in the full range of scenarios that can arise during dispute-resolution procedures in order to increase the likelihood of reaching agreements during conciliation hearings.

# 3.1.1. CONCILIATION HEARINGS

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## Procedure

- The settlement procedure is initiated at the request of a given party through a written complaint that must meet the requirements set forth in Article 139 of the RLFDA.
- Once the written complaint has been accepted, it shall be made available to the counter party in order to enable that party to respond to said complaint and to assert its rights within 10 days from notification.
- Said summons is issued under penalty of a fine ranging from 100 to 150 times the daily minimum general wage in force in the Federal District (6,729 MXP – 10,093 MXP or 504 USD - 756 USD).



# CONCLUSION OF THE SETTLEMENT PROCEDURE

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## **AGREEMENT:**

The parties reach a conciliation settlement that ends the dispute, a settlement that may be stipulated in an agreement, approved by INDAUTOR at the request of one or more of the parties, that shall have the force of res judicata and an enforceable right.

(Article 218 (IV))

## **NO AGREEMENT:**

The parties rights are safeguarded and can be exercised in the way and form that best meet the interests of the parties; or, the parties can submit to arbitration or launch the appropriate civil, administrative or criminal action.

(Article 218 (V))



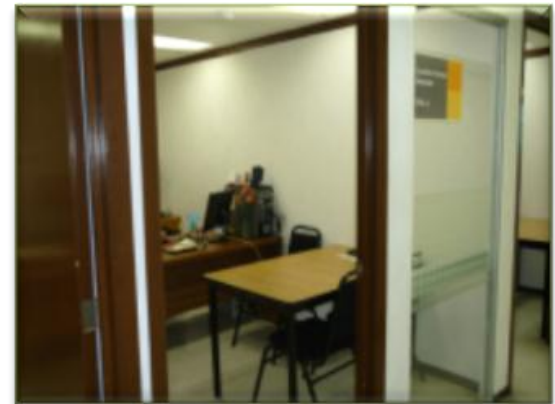
# ADMINISTRATIVE SETTLEMENT PROCEDURE

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This procedure does not in any way suspend the ‘injured’ party’s right to launch any other civil, administrative or criminal action in order to defend his/her rights. The settlement procedure is independent in nature and is not subject to the exhaustion of the other actions.

This procedure is an attractive, low cost, clear and robust approach for parties involved in disputes.



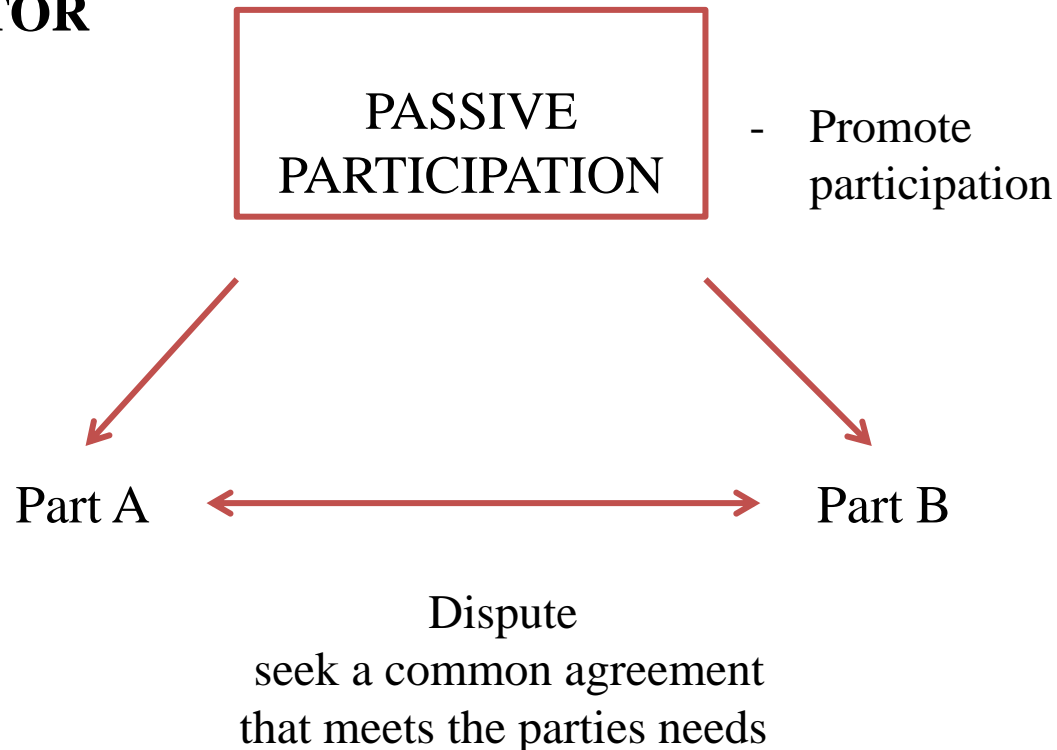


# ADMINISTRATIVE SETTLEMENT PROCEDURE

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- The specialized body

## FACILITATOR



## 3.1.2. ON-LINE PROCEDURE

INDAUTOR is currently seeking to establish on-line settlement conferences; such conferences would increase territorial scope, given that the wider coverage that they could offer would be of benefit to users located outside of the Federal District.

### CONCILIATION LAWYER



COMPLAINANT

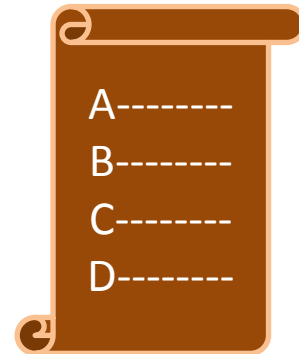
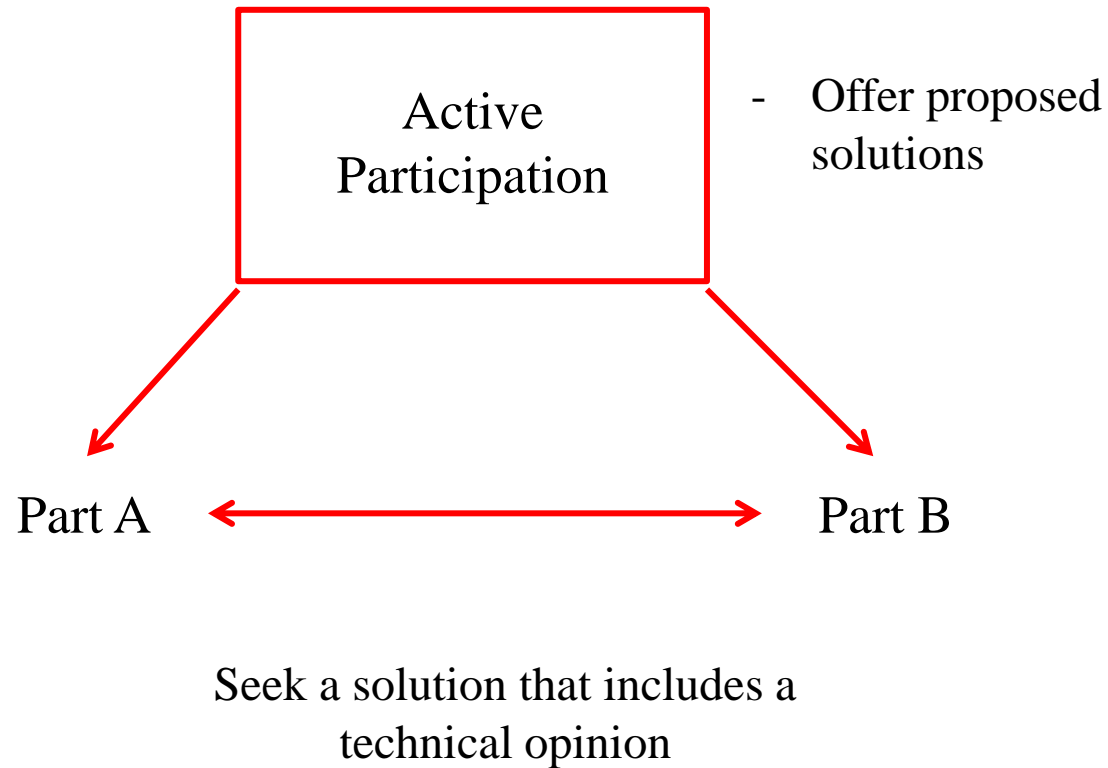


RESPONDENT

## 3.2. ADMINISTRATIVE PROCEDURE OF ASSISTED CONCILIATION

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### FACILITATOR



# PROJECT 2014: MEDIATION

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**OBJECTIVE:** The inclusion of this alternative dispute mechanism will allow the conciliation lawyer the possibility to offer a direct opinion and assist the parties in dispute find possible solutions of mutual benefit.



# PROJECT 2014: MEDIATION

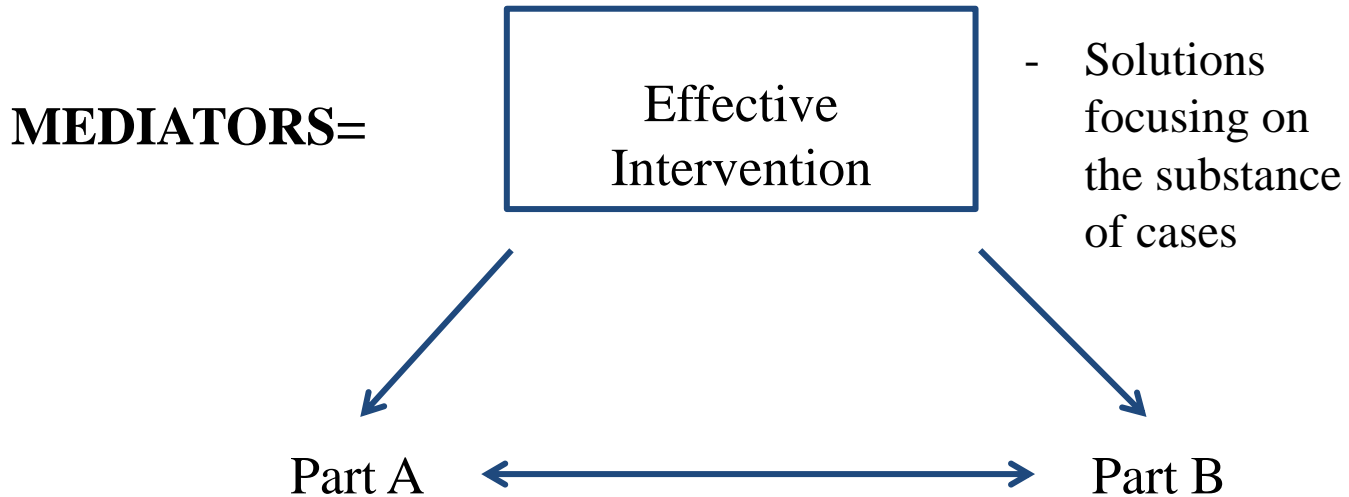
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## **FACULTIES:**

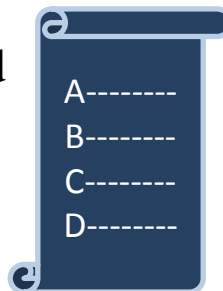
- INDAUTOR's mediation lawyers will have the power to propose solutions focusing on the substance of cases that shall be accepted with the consent of the parties.
- In a case where no agreement has been reached, the authority shall issue a recommendation that may be taken into account by the parties, as well as by the administrative or judicial authority ruling on one of the procedures set forth in the relevant Law.
- In order for this mediation procedure to be implemented, appropriate provisions must be made in both the LFDA and its Regulations regarding INDAUTOR's staff.

# ADMINISTRATIVE PROCEDURE OF MEDIATION

## - New Mechanism-



The solution shall be accepted by the parties.



or



Propose solutions focusing on the substance of cases

## 3.4. ARBITRATION

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### Legal basis

The arbitration procedure is governed by Articles 219 to 228 of the LFDA and 143 to 155 of its Regulations, the Code on Trade also being applied to private arbitration.

### **INDAUTOR is responsible for:**

#### **❖ The preparation, authorization and annual publication, in the Official Daily Gazette:**

- The list of INDAUTOR-approved arbitrators.
- The amount of the fees that the parties must pay to each of the arbitrators.
- Any other item concerning the arbitration process.

# ARBITRATION

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The parties may agree to submit to an arbitration procedure through:

- I. AN ARBITRATION CLAUSE:** an agreement to arbitrate included in contracts concerning works protected by this Law or in an independent agreements referring to all or certain disputes which may arise in the future between the parties.
  
- II. AN ARBITRATION SUBMISSION AGREEMENT:** an agreement to submit to the arbitration procedure when all or certain disputes have already arisen between the parties at the time of the execution of the agreement.

Both the arbitration clause and the arbitration submission agreement shall, without exception, be set out in writing.



# ARBITRATION

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## **Process:**

- **Selection of arbitration panel:** Once the parties have expressed their willingness to submit to arbitration, they shall select two arbitrators from the list published and authorized by INDAUTOR, with those arbitrators in turn appointing a third member from the same list to serve as the Chair of the arbitration panel, such panel always being comprised of an odd number of members.

(Article 222 of the LFDA)

- Arbitration procedures shall be resolved within no more than 60 days, and may be concluded by an agreement between the parties or by the issuing of an award.

(Article 224 of the LFDA)

# PRIVATE ARBITRATION

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Arbitrators authorized by  
INDAUTOR



Arbitration Panel



- a) Arbitration submission agreement
- b) Arbitration clause

Arbitration award  
(binding for the  
parties)

## 4. STATISTICS

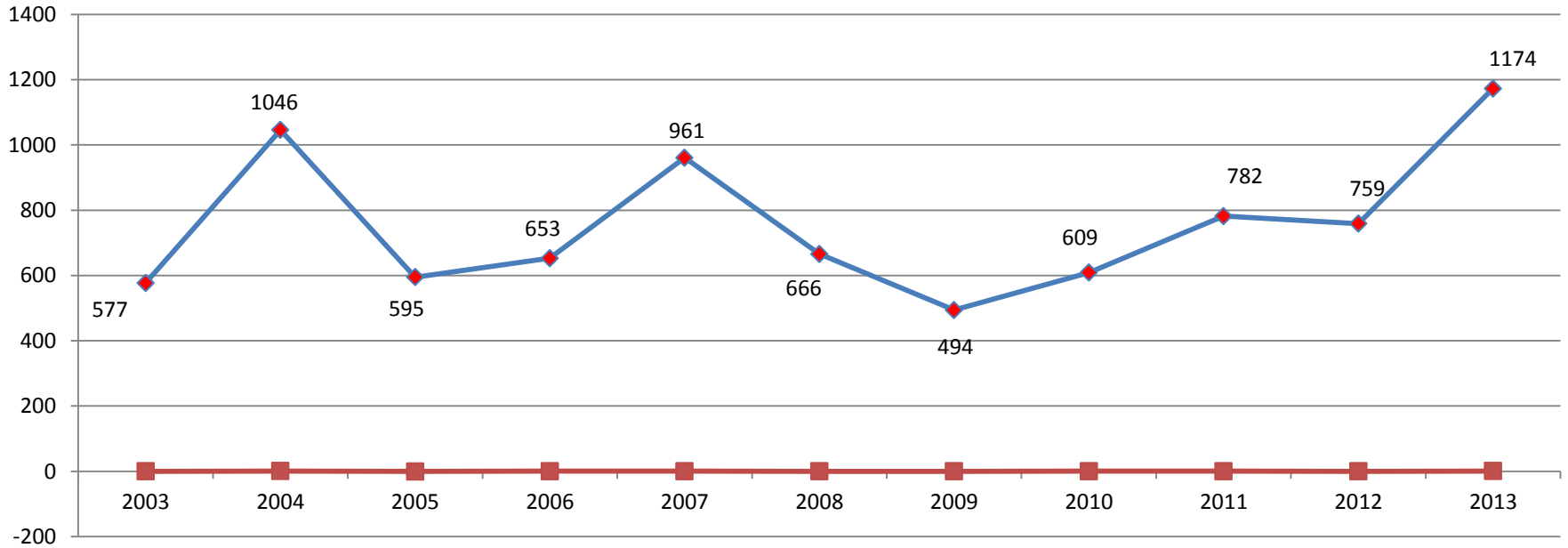
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- **1998:** 396 complaints were filed, of which 44.94% resulted in conciliation.
- **2000:** 535 complaints were filed, of which 50.28 % resulted in conciliation.
- **2011:** 782 complaints were filed.
- **2012:** 759 complaints were filed, giving an average of over 700 complaints.
- **2013:** 1174 complaints were filed, yielding the greatest number of complaints filed to date.

Finally, between 1998 and 2013, approximately 24,386 settlement conferences were convened, demonstrating how useful and effective alternative dispute-resolution mechanisms are for the various sectors, rights owners and private individuals.



# STATISTICS



YEARS	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
COMPLAINTS	577	1046	595	653	961	666	494	609	782	759	1174
PER CENT INCREASE TO THE YEAR BEFORE.	-23%	81%	-43%	10%	47%	-31%	-26%	23%	28%	-3%	63.39%

# 5. CONCLUSIONS

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- INDAUTOR believes that, as a result of their rapid, dynamic, flexible and cost-effective nature, alternative dispute-resolution mechanisms allows parties in dispute major benefits.
- The appropriate regulation of these alternatives shall grant security and legal certainty to those parties who make use of them due to their swift and flexible nature.
- The parties have the option of resorting to an expert in the field, who can then propose solutions regarding the dispute in an objective fashion.
- The advantages offered by these mechanisms mean that the parties do not need to pay fees for legal representation and can avoid the long delays associated with legal procedures.
- As part of efforts to improve the settlement procedure through the use of new technologies, INDAUTOR is setting up an on-line settlement conference system.
- Once a regulated conciliation procedure is in place, INDAUTOR will have an extrajudicial procedure that will enable it to put forward possible solutions to parties concerning the substance of the disputes.
- The implementation of mediation as the fourth alternative dispute-resolution mechanism will enable INDAUTOR to rule on the substance of a given dispute through a recommendation.
- In Mexico, it has been proven that alternative dispute-resolution mechanisms are extremely useful in resolving copyright disputes.

THANK YOU FOR YOUR KIND ATTENTION

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