

Committee on Development and Intellectual Property (CDIP)

Twenty-Eighth Session
Geneva, May 16 to 20, 2022

OVERVIEW OF THE WIPO GUIDE ON ALTERNATIVE DISPUTE RESOLUTION FOR MOBILE APPLICATION DISPUTES

prepared by the Secretariat

1. The Annex to this document contains an overview of the WIPO Guide on Alternative Dispute Resolution for Mobile Application Disputes, undertaken in the context of the Project on Enhancing the Use of Intellectual Property for Mobile Apps in the Software Sector (document CDIP/22/8).
2. The Guide has been prepared by Mr. Chung Nian Lam, Head of the Intellectual Property, Technology and Data Group at WongPartnership Limited Liability Partnership (LLP), a law firm headquartered in Singapore.
3. *The CDIP is invited to take note of the information contained in the Annex to the present document.*

[Annex follows]

OVERVIEW OF THE WIPO GUIDE ON ALTERNATIVE DISPUTE RESOLUTION FOR MOBILE APPLICATION DISPUTES

This Guide builds upon the earlier work of the CDIP in the mobile application sector, recognising its continued economic importance, and relative accessibility for developed and developing economies. Specifically, whilst the earlier CDIP initiatives addressed the use of strategic value of intellectual property (IP) rights in this sector, the Guide considers how alternative dispute resolution (ADR) mechanisms are well suited to address IP and related commercial disputes that might arise in the context of mobile applications.

The Guide comprises 11 chapters, addressing various foundational themes relating to ADR in the mobile application (MA) context.

Part I provides an overview of ADR options in mobile application disputes.

Readers are first introduced to how IP disputes may arise in the context of MAs, *i.e.*, not only in relation to the software code comprised in MAs, but also in the content of MAs (for example, the media elements or content that may be embodied in a MA). As such, software developers, MA publishers, “gig-workers”, artists, illustrators, musicians and writers would all be relevant stakeholders having an interest in ensuring that their IP rights are protected, and consequently, should have an awareness of ADR procedures as alternatives to traditional litigation as a means of enforcing their IP rights.

The relative suitability and advantages of ADR in the context of MAs is then discussed. For example, the consensual nature of ADR allowing for more flexibility in the procedures to be applied, access to neutrals with relevant expertise to address technical issues prevalent in MA disputes, greater prospects for the commercial relationship between the parties to be preserved, and how ADR can address multi-jurisdictional disputes in a single proceeding and providing a single outcome.

Guidance is provided as to how one may decide between opting for ADR or more traditional litigation processes, taking into account factors, such as whether there is a risk of multiple inconsistent outcomes in cross-border multi-theatre disputes, the need for access to neutrals with suitable expertise, whether there might be perceived home ground advantage to any litigants, confidentiality of the proceedings, enforceability of the outcomes and resource investments needed.

The common ADR options of mediation and arbitration are then compared and discussed, so as to inform readers as to how these options differ and may be more appropriate in particular circumstances. Some other options, such as mediation followed by arbitration (“med-arb”) and mediation during arbitration are also introduced.

The Guide then introduces the ADR services offered by WIPO as a neutral and cost efficient option for litigants to consider. It also presents the benefits of an ADR process being administered by a reputable institution, such as WIPO’s Arbitration and Mediation Centre, which may include cost effectiveness, technological support, experience and expertise.

In Part II, the Guide provides practical considerations in ADR processes for mobile application disputes.

Readers are introduced to what they may expect in the ADR process, both in terms of threshold legal issues, such as the recognition of ADR outcomes and agreements to mediate / arbitrate, and the arbitrability of the subject matter of the dispute, as well as the procedural steps that might typically be expected in mediation and arbitration proceedings. The options for interim relief, expedited arbitration and expert determination are also discussed.

The Guide then discusses practical issues in international ADR outcomes, such as international frameworks for the recognition / enforcement of mediation settlement agreements under the Singapore Convention, and the recognition / enforcement of arbitral awards under the New York Convention. The common preconditions for such recognition / enforcement are also respectively discussed.

In the next chapter, other practical issues in ADR are further discussed, specifically, confidentiality in mediations and arbitrations, since this is often an area of significant concern for litigants, as well as joinder and consolidation of actions and limitation periods.

Finally, the Guide discusses considerations and specific issues relating to the drafting ADR contract clauses and submission agreements, highlighting key concepts, such as separability of ADR agreements, and party autonomy, as well as key elements of ADR agreements to avoid uncertainty, such as the scope of the ADR agreement, whether it should be *ad hoc* or institutional, the place or seat, applicable law, appointment of neutral(s), and finality of outcomes. The Guide discusses multi-tiered ADR clauses, as well as the availability of model clauses in multiple languages, and clause generator tools made available by WIPO.

The Guide concludes with how the use of smartphones and MAs continues to evolve in scope and nature. It highlights that the MA sector is expected to continue to feature as one of the fastest growing sectors in the digital economy for years to come, and developing economies will stand to reap a harvest of benefits from progressive digital transformation. Correspondingly, MA disputes may become progressively complex and specialized, and hence the awareness of the suitability and advantages of ADR mechanisms as a sophisticated, international and yet flexible alternative to court based litigation will be valuable.

[End of Annex and of document]