

# STUDY ON THE AUDIOVISUAL LEGAL FRAMEWORK IN LATIN AMERICA

## **PART 6: WIPO ALTERNATIVE DISPUTE RESOLUTION (ADR) METHODS FOR AUDIOVISUAL OTT BUSINESS MODELS**

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### Disclaimer

This study was commissioned as part of the Pilot Project on Copyright and the Distribution of Content in the Digital Environment<sup>1</sup> of the WIPO Committee on Development and Intellectual Property (CDIP). This document is not intended to reflect the opinions of Member States or the WIPO Secretariat.

### Abstract:

With the growing number of contracts made for a single audiovisual production, some of them not even initially in written form, disputes frequently arise in the different phases of the audiovisual sector. Given the growth of international productions and global distribution in the OTT environment,<sup>2</sup> there is an increasing need to find ways to protect the interests of the owners and users of copyright and content in the digital environment. This is a reality on a global level, which also carries over to the Latin American context. In particular, make efficient means available to the parties in terms of time and cost to resolve disputes that may arise from their contractual relationships, especially those that have cross-border elements.

In this regard, the WIPO Arbitration and Mediation Center (the WIPO Center) has seen an increasing number of mediations and arbitrations of cross-border disputes in the film and media industry. The WIPO Center has also noted an increasing interest from private parties and Member States (for example, intellectual property and copyright offices) to find ways to reduce barriers to access to dispute resolution options, especially given the international nature of many of these controversies (for example, films, television productions, television formats, collective management, among others).

With this objective in mind, this document presents an overview of the use of alternative dispute resolution mechanisms to resolve these disputes, WIPO's experience in this field, and the global trends that are developing in this digital environment.

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<sup>1</sup> Studies available at : [https://dacatalogue.wipo.int/projects/DA\\_1\\_3\\_4\\_10\\_11\\_16\\_25\\_35\\_01](https://dacatalogue.wipo.int/projects/DA_1_3_4_10_11_16_25_35_01)

<sup>2</sup> The definition of over-the-top (OTT) services in the audiovisual industry is the same as that provided in this study, in sections 1 and 2 of "Audiovisual OTT business models in Latin America: Recent trends and future predictions". OTT services in the audiovisual industry will therefore be understood as "[t]hose platforms and services distributed by Internet, such as Google or Skype. In the audiovisual sector, this relates to content distribution that does not depend on conventional means such as free-to-air television or subscription television (...) [OTT services] are a subset within the world of VOD services (...), which can be divided into five categories (...) SVOD, TVOD, AVOD, hybrid services and TV everywhere."

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## 1. INTRODUCTION

The digital platform industry is becoming increasingly important for audiovisual content consumption worldwide,<sup>3</sup> and Latin America is no exception.<sup>4</sup> As part of this trend, over-the-top (OTT) service platforms need new and diverse content to maintain their business models. Consequently, their business focuses not only on distributing content but also on creating it inside and outside its jurisdiction of origin,<sup>5</sup> and, therefore, needing to make contracts with international parties. This generation of content<sup>6</sup> implies new challenges in terms of business, contracting and, as concerns this paper, the different legal systems and traditions and the specialty of the legal procedures and agents for resolving disputes that may arise.

In the same way, the dynamics of these new audiovisual consumption markets have generated new forms of audiovisual content exploitation that have led to changes in the contractual conditions previously existing between content producers and content distributors.

Added to this are the particular characteristics of the audiovisual industry, such as the number of parties needed to carry out such productions,<sup>7,8</sup> the increasing production costs, the collaboration needed between parties domiciled in multiple jurisdictions and with multiple languages and cultures, the long-term relationships involved in the different exploitation models, the perception that persons working in this type of creative industry have about legal disputes,<sup>9</sup> and other matters.<sup>10</sup>

The aim of this chapter is to explain how the alternative dispute resolution (ADR) mechanisms offered by the WIPO Arbitration and Mediation Center (WIPO Center) can help to settle, and mitigate the effects of, disputes arising between different parties in the audiovisual industry and OTT services.

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<sup>3</sup> See, for example, MPA, “Comments of the Motion Picture Association of America, Inc.” (2018) Intellectual Property Enforcement Coordinator, p. 3, 4, 7; MPA, “The Economic Contribution of the Motion Picture & Television Industry to the United States: Creating Jobs, Trading Around the World” (2018) Motion Picture Association, p. 1; MPA, “Theme Report 2019” (2019) Motion Picture Association p. 4, 5, 8, 12, 34, 40.

<sup>4</sup> See p. 1 of the section “Audiovisual OTT business models in Latin America: Recent trends and future predictions” in this study. Also, MPA, “Theme Report 2019” (2019) Motion Picture Association, p. 5; N. Hendrickx, “Diagnóstico del mercado *theatrical*, televisión, DVD y Blu-ray, y plataformas digitales VOD en América Latina” (2015) Colombian Ministry of Culture, “Regional coordination platform for audiovisual distribution” project, pp. 129-130.

<sup>5</sup> P. 9 and 10 of the “Audiovisual OTT business models in Latin America: Recent trends and future predictions” in this study.

<sup>6</sup> N. Hendrickx, “Diagnóstico del mercado *theatrical*”, p. 129.

<sup>7</sup> See C. E. Renault and R. H. Aft “From Script to Screen: The Importance of Copyright in the Distribution of Films” (2011) WIPO, Creative industries – Booklet no. 6.

<sup>8</sup> The various participants include: performers, authors, advertising agencies, filmmakers, composers, directors, actors, guild and industry associations, producers, screenwriters, creators, investors, financiers, film funds, performance bond companies, insurers, sales agents, entertainment, media and intellectual property (IP) attorneys, consultants and accountants, distributors, exhibitors, publishing houses, trade federations, collecting societies, and users of creative materials.

<sup>9</sup> In the “WIPO-MCST Survey on the Use of ADR Mechanisms for B2B Digital Copyright- and Content-related Disputes”, the results of which will be reported at the end of 2020, industry professionals characterized certain stakeholders as having a less litigious culture that is more given to direct settlement. Likewise, the characteristics of the parties, and the rights very often contested in these situations, transcend a purely business framework and usually involve personal aspects, meaning that litigation to resolve the dispute between the parties may not suit their real needs.

<sup>10</sup> For example, see AIE, “Los derechos de los artistas musicales en las grabaciones audiovisuales” (n.d.) Spanish Society of Performers (AIE) and Ibero-Latin-American Federation of Performers, p. 5; Le Monde, “En Suède, Netflix accepte de verser des royalties aux professionnels de l’audiovisuel” Paris, March 12, 2020. Taken from: <https://search.proquest.com/docview/2375725695?accountid=41869>.

The chapter begins with a general overview of ADR methods, followed by the WIPO Center's experience in this type of dispute, model dispute resolution clauses and, lastly, certain international trends.

## 2. ADR PROCEDURES

### 2.1. INTRODUCTION TO ADR PROCEDURES

Every legal act, whether contractual or non-contractual, may potentially result in a dispute. This reality permeates all industries, including the creative industries across which the audiovisual sector and OTT services operate.

Although each industry has its particularities and different stakeholders, the needs of the disputing parties generally revolve around similar considerations, such as limiting costs (of litigation, but also those resulting from the financial impact that disputes have on the carrying out and commercial exploitation of audiovisual productions), reducing dispute resolution times (which translates into said financial impact), and obtaining the assistance or decision of a neutral third party who not only specializes in the law applicable to the case but also understands the industry.

Such considerations are no less true for the audiovisual industries. However, as will be shown, the diversity of parties, their individual economic influence and ability and the growing internationalization of disputes have highlighted the need to seek solutions that satisfy these considerations. In this regard, the WIPO Center works to enable the various conflicting parties to settle their disputes efficiently.<sup>11</sup>

It can generally be said that ADR methods, such as mediation and arbitration, are dispute resolution procedures alternative to the courtroom<sup>12</sup> and have the following characteristics:

- **Party autonomy:** The parties must agree to refer a dispute to ADR.<sup>13</sup> This allows them to have greater control over the dispute and the development of the procedure, since they can tailor it to the needs of the dispute (for example, selecting mediators or arbitrators, and the language and applicable law of the proceedings).
- **Specialty:** The mediator and the arbitrator(s) are impartial independent third parties experienced in the areas of the dispute between the parties.
- **A single procedure:** Different disputes between the parties can be consolidated into a single procedure. In multi-jurisdictional disputes, this avoids the need to start proceedings with courts in different jurisdictions, thereby enabling everything to be consolidated into a single procedure.
- **Neutrality:** This allows the parties to seek a "neutral" forum and law, eliminating the "advantage" that one of them may enjoy from holding the proceedings in their jurisdiction. This is common in international settlements.

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<sup>11</sup> For example, see the WIPO procedure settlement rates: <https://www.wipo.int/amc/en/center/caseload.html>.

<sup>12</sup> See the definition provided at: [https://www.law.cornell.edu/wex/alternative\\_dispute\\_resolution](https://www.law.cornell.edu/wex/alternative_dispute_resolution).

<sup>13</sup> There are two main routes to submit a dispute to ADR: firstly, through contractual clauses, providing for future disputes; and secondly, through a submission agreement, wherein the parties decide to submit the dispute to ADR once it has arisen. As examples of these mechanisms, see the model clauses and submission agreements developed by the WIPO Center at: <https://www.wipo.int/amc/en/clauses/>.

- **Confidentiality:** ADR proceedings are private.<sup>14</sup> This helps the parties to avoid any concerns about the public impact of the proceedings, which, for example, in the audiovisual industry, could pose reputational and publicity problems for the productions and their future marketing.
- **Preservation of commercial relationships:** ADR creates a less adversarial environment between the parties.<sup>15</sup> Being able to establish dialogue between them allows them to achieve solutions that can go beyond the purely legal dimension and preserve—or even begin—commercial relationships.
- **Finality and international enforcement:** A key element in arbitration is that when parties refer a dispute to the procedure, they benefit from the finality of an arbitral decision (award). Unlike court decisions, arbitral awards are usually definitive, with no recourse to appeal on the substance of the dispute.<sup>16</sup> In international arbitration, arbitral awards have an international recognition and enforcement system, known as the 1958 New York Convention,<sup>17</sup> which has been widely ratified and allows the international enforcement of arbitral awards.<sup>18</sup> The United Nations has recently approved a similar instrument<sup>19</sup> for agreements resulting from mediation proceedings, which enters into force on September 20, 2020.

## 2.2. MEDIATION

In a mediation, the parties try to reach an agreement, assisted by a neutral third party, who guides their cooperation. The confidential nature of mediation allows the parties to discuss the points of contention, interests and possible solutions openly, avoiding such information from being used against one of them outside of the mediation.

Mediation has a commercial and not purely legal focus, aiming to achieve a consensual agreement between the parties that serves their interests. It can therefore result in a contractual agreement between the parties that ends the conflict while keeping their relationship alive.

As will be shown below, mediation can be combined with other types of dispute resolution procedures, whether alternative mechanisms such as arbitration, or traditional procedures such as court litigation.

In terms of costs, mediation is less expensive for the parties than adversarial procedures such as arbitration or lawsuit and, therefore, is commonly used before such proceedings. If mediation does not result in an agreement, the parties may proceed to other dispute resolution mechanisms.

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<sup>14</sup> For example, see the WIPO ADR Rules (WIPO Mediation Rules, arts. 15-18; WIPO Arbitration Rules arts. 75-78; WIPO Expedited Arbitration Rules arts. 68-71; and WIPO Expert Determination Rules, art. 16).

<sup>15</sup> See: <https://www.wipo.int/amc/en/center/caseload.html>.

<sup>16</sup> It is important to bear in mind that, depending on each jurisdiction, there may or may not be annulment proceedings or another type of action against arbitral awards. It is therefore advisable to check the rules specific to the chosen seat of the proceedings when seeking to limit the ability to appeal an arbitral award.

<sup>17</sup> United Nations Convention for the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York in 1958 (New York Convention). Available at: <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/new-york-convention-e.pdf>.

<sup>18</sup> For Latin American, there is also the Inter-American Convention on International Commercial Arbitration of 1975 (Panama Convention). Available at: [http://www.sice.oas.org/dispute/comarb/intl\\_conv/caicpae.asp](http://www.sice.oas.org/dispute/comarb/intl_conv/caicpae.asp).

<sup>19</sup> United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation). Available at: [https://uncitral.un.org/en/texts/mediation/conventions/international\\_settlement\\_agreements](https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements).

## 2.3. ARBITRATION

As in mediation, the parties must agree to use arbitration to settle their disputes. However, unlike mediation, arbitration results in an award binding on the parties, that is, a definitive decision taken by a neutral intermediary chosen by them. This is without prejudice to the possibility of reaching an agreement during the arbitration procedure.

The arbitral award is binding on the parties and, if it has international connections (such as when the parties are in different jurisdictions), is internationally enforceable; for instance, under the New York Convention.<sup>20</sup> Arbitral awards are final, meaning that they are not subject to appeal, and have the same enforceability as a court ruling.

In contrast to court litigation, arbitration gives the parties greater flexibility, allowing the procedure to be defined and customized to the needs of the dispute. The parties can choose arbitrators who are not only experts in a specific area of law but experienced in contracts related to the audiovisual industry, matters concerning OTT, digital and technological services and other commercial issues.

In commercial arbitration, the parties can establish the law applicable both to the arbitral proceedings (the law of the jurisdiction chosen as the seat of arbitration, or *lex arbitri*) and to the substance of the dispute. Technological means, alongside the confidentiality and flexibility of the procedure, allow arbitration to be conducted electronically, including the holding of hearings.<sup>21</sup>

Moreover, if speed and cost in settling the dispute are essential factors, the parties can opt for expedited arbitration proceedings (accelerated arbitration), wherein the main stages of arbitration are condensed, allowing the process to be concluded more quickly.

## 2.4. EXPERT DETERMINATION

In an expert determination procedure, the parties submit a specific issue (for example, a technical question) to one or more experts, who issue a decision. The parties can agree whether the decision will be binding.

This procedure can be especially useful for resolving technical matters, such as the determination of royalties or commission rates for distributing audiovisual productions.<sup>22</sup>

## 3. WIPO ARBITRATION AND MEDIATION CENTER

### 3.1. ABOUT THE WIPO CENTER

ADR proceedings can be carried out *ad hoc* or under the auspices of an institution. In *ad-hoc* proceedings, the parties tailor the process and administer it themselves directly with the mediator, arbitrator or expert, which requires considerable experience of handling such proceedings and effective cooperation among all parties to avoid delays and unnecessary costs. It is usually complicated in practice. In institutional ADR proceedings, the selected institution provides a procedural structure for initiating and conducting the proceedings, management of the financial aspects of the case, and access to qualified arbitrators, mediators and experts, while allowing the parties a high degree of flexibility to adapt the procedure to their needs.

<sup>20</sup> The Convention currently has 163 contracting States. See: <https://www.newyorkconvention.org/list+of+contracting+states>.

<sup>21</sup> See: <https://www.wipo.int/amc/en/eadr/index.html>.

<sup>22</sup> C. E. Renault and R. H. Aft "From Script to Screen", pp.109-110.

The WIPO Center offers ADR methods to allow the parties to resolve their domestic or international commercial conflicts without needing to go to court. It is an international center specialized in IP and technology disputes, including disputes in the audiovisual and OTT service industry,<sup>23</sup> and focuses on controlling the time and cost of the proceedings. The WIPO Center also collaborates with national IP offices and other organizations interested in IP, to promote the use of ADR mechanisms.<sup>24</sup>

The WIPO Rules on Mediation, Arbitration, Expedited Arbitration and Expert Determination are flexible and can be customized to the specific needs and characteristics of parties involved in the audiovisual industry, with particular regard to IP and technology and, more generally, commercial relations between the parties. The WIPO Center also has procedures tailored to the film and media industry.<sup>25</sup>

In its role as administrator of the procedures, the WIPO Center maintains strict neutrality and independence. The effectiveness of the procedures greatly depends on the quality of the mediator, arbitrator or expert. The WIPO Center maintains a list of more than 2,000 international mediators, arbitrators and experts experienced in the IP and technology industry, including the audiovisual industry, who can be appointed by the parties in accordance with the mentioned Rules.

### 3.2. THE WIPO CENTER'S EXPERIENCE IN THE AUDIOVISUAL INDUSTRY

#### 3.2.1. WIPO Mediation and Expedited Arbitration Rules for Film and Media<sup>26</sup>

Developed in cooperation with industry experts, the WIPO Rules for Film and Media have been specifically tailored for settling disputes in film and media, particularly those concerning international agreements, such as licensing, distribution and marketing contracts, co-productions, outsourcing, and commissioning of works. These procedures have shorter time limits to take account of increasingly shorter production and product times and the dynamics of an ever more competitive international market.

Under the WIPO Film and Media Rules, the WIPO Center has established an international list of mediators, arbitrators and experts in the audiovisual industry. As part of proceedings administrated in accordance with the WIPO Rules, if the parties cannot agree or do not know experts suitable to be mediators or arbitrators, the WIPO Center can provide them with a list of candidates with the relevant expertise for the particular dispute.

#### 3.2.2. Case examples

##### *a. A WIPO mediation of a copyright dispute in the television (TV) industry*

A dispute arose between two European companies over the copying of a TV format for an entertainment program. The company that had created and developed the TV format said that there were substantial similarities between its program and a program produced by the other company.

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<sup>23</sup> See: <https://www.wipo.int/amc/en/film/>.

<sup>24</sup> See: <https://www.wipo.int/amc/en/center/specific-sectors/ipoffices/index.html>.

<sup>25</sup> See: <https://www.wipo.int/amc/en/film/>.

<sup>26</sup> The procedures administered by WIPO under the WIPO Film and Media Rules and explained in this section have a schedule of reduced fees and costs. These fees are not-for-profit and take account of the features and amounts typical in disputes in the film and media industry. The detailed schedule of rates and costs can be consulted at: <https://www.wipo.int/amc/en/film/fees/index.html>.



Following an exchange of correspondence between the parties, they agreed to refer the dispute to WIPO mediation, in accordance with the WIPO Mediation Rules for Film and Media. In the agreement for submission to mediation, they also agreed to appoint a mediator with knowledge of the TV format industry. With the WIPO Center's assistance, the parties agreed to appoint a mediator from its list. They settled their dispute and reached an agreement on collaboration after several meetings with the mediator.

*b. A WIPO arbitration on a broadcast rights distribution agreement*

A TV distribution company filed a request for arbitration under the WIPO Arbitration Rules in a dispute against an international sports federation, which arose from a broadcast rights distribution agreement. The agreement related to the exclusive broadcast distribution of sport competitions to TV audiences in the regions of Asia and the Pacific. The dispute resolution clause provided that the dispute be decided by a sole arbitrator, the place of arbitration be Geneva, Switzerland, and the law applicable to the substance of the dispute be Swiss law. The TV distribution company claimed damages for breach of contract.

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

*c. A WIPO expedited arbitration in the context of a film co-production agreement (I) and (II)*

Two European parties and a Latin American party signed a co-production agreement to develop an animated film. The Claimants stated that the Respondent had wrongfully unilaterally terminated the agreement. The Respondent's counterclaim established the grounds for its right to unilateral termination for several breaches of contract by the Claimants (for example, poor quality materials).

The contract included a WIPO expedited arbitration clause. From a list prepared by the WIPO Center, the parties appointed a candidate of a different nationality as the sole arbitrator. The arbitral proceedings were particularly fraught with processing incidents and requests for interim measures, which the arbitrator was actively involved in resolving to allow the proceedings to advance. A virtual two-day hearing was held with the participation of the parties, the arbitrator, the witnesses and experts and the WIPO Center.

The arbitrator rendered a final award deciding that the Respondent had terminated the contract in accordance with the applicable law because of proven breaches of contract by the Claimants.

Following this expedited arbitration, one of the Claimants initiated new proceedings to obtain reimbursement of the costs incurred in the co-production, in accordance with a contractual mechanism provided for in the co-production agreement in the event that one of the parties was forced to withdraw from the co-production, as had occurred in this case because of the decision in the arbitral award of the first arbitration.

*d. Disputes between rightholders and OTT platforms*

The WIPO Center is also experienced in administering rights licensing disputes between rightholders and online platforms.

### 3.3. WIPO MODEL CLAUSES

As a private and consensual mechanism, ADR is based on the agreement of the parties. The starting point of any mediation or arbitration is therefore the decision by the parties to submit future or existing disputes to one of the procedures by mutual agreement.<sup>27</sup> The agreement can be contained in a contract between the parties or can be specially drafted for a particular dispute once it has occurred; for example, in disputes concerning infringement of copyright and related rights related to content available on audiovisual OTT systems.

To facilitate the use of WIPO ADR mechanisms, the WIPO Center provides model contract clauses and submission agreements in various languages, including Spanish,<sup>28</sup> developed in collaboration with international experts.

The WIPO Center also has standard clauses and agreements, with model clauses and submission agreements for conducting mediation and arbitration proceedings in accordance with the WIPO Mediation and Expedited Arbitration Rules for Film and Media, which can be included in different OTT industry contracts.<sup>29</sup>

The WIPO Center makes various ADR mechanisms available; there are model clauses and submission agreements for each WIPO ADR procedure and for combinations of these procedures. The following is an example of a tiered model clause (that is, with a combination of ADR procedures) referring a dispute to the WIPO Center under the WIPO Film and Media Rules, with a brief explanation of its elements:

**Mediation for film and media followed, in the absence of a settlement, by expedited arbitration for film and media**

*“Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules for Film and Media.(A) The place of mediation shall be [specify place].(B) The language to be used in the mediation shall be [specify language].(C)*

*If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within [30][60] 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 for Film and Media. Alternatively, if, before the expiration of the said period of [30][60] days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim 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 for Film and Media.(D) 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].(E) The dispute, controversy or claim referred to arbitration shall be decided in accordance with the law of [specify jurisdiction].(F)”*

**(A) Scope:** *The WIPO model clauses and the submission agreements are worded broadly to cover disputes concerning the contract, as well as non-contractual claims.*

<sup>27</sup> I. de Castro, H. Wollgast and C. Accornero, ‘Effective Mediation and Arbitration Clauses and Submission Agreements for Intellectual Property Disputes’ (2018) GRUR Int. 7/2018, pp. 648-651.

<sup>28</sup> See: <https://www.wipo.int/amc/en/clauses/>.

<sup>29</sup> See: <https://www.wipo.int/amc/en/film/rules/index.html>.

**(B) Place of mediation:** *The parties can determine where they wish the mediation to be conducted. Meetings can also be held by videoconference.*

**(C) Language:** *The parties can choose the language that best suits their needs.*

**(D) Mediation time limit:** *Establishing a mediation time limit in a combined clause helps to advance the case to reach an agreement or to initiate the next procedure agreed by the parties.*

**(E) Place of arbitration:** *The choice of the place of arbitration determines the law that governs the procedural framework of the case (including the availability of interim measures, the conduct of the arbitration and the enforcement of the award), as well as the “nationality” of the award and the courts that will be competent to hear certain aspects of the arbitral proceedings. Regardless of the chosen place of arbitration, the parties can hold meetings or hearings anywhere in the world, as appropriate in each case.*

**(F) Applicable substantive law:** *It is advisable that the parties choose the applicable substantive law, that is, the law on which the arbitral tribunal will be based to decide the dispute.*

### **Unilateral request for mediation**

The WIPO Center is regularly contacted about disputes in which a party wishes to submit a dispute to mediation, but there is no mediation agreement between the parties; for example, in right infringement disputes or in cases pending before courts. To facilitate the submission of such disputes to WIPO mediation, a party can submit a unilateral request for mediation<sup>30</sup> to the WIPO Center in accordance with the WIPO Mediation Rules.<sup>31</sup> The WIPO Center may assist the parties or, if they request, appoint a neutral third party to provide the required assistance.<sup>32</sup>

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<sup>30</sup> WIPO Mediation Rules for Film and Media, art. 4(a). Available at: <https://www.wipo.int/amc/en/film/rules/index.html#art3>.

<sup>31</sup> See: [https://www.wipo.int/amc/en/docs/request\\_mediation.docx](https://www.wipo.int/amc/en/docs/request_mediation.docx).

<sup>32</sup> WIPO Mediation Rules for Film and Media, art. 4(b). Available at: <https://www.wipo.int/amc/en/film/rules/index.html#art3>.

#### 4. CONCLUSION

The continuing growth of the different OTT service models around the world and in Latin America brings with it the potential for more disputes, especially those with international connections (on issues of catalogue licensing contracts, production and others mentioned in this article). The litigating parties also have particular characteristics that bring other elements to a potential dispute (these may be matters that go beyond the business itself, such as personal, economic or cultural issues or an aversion to litigation), which require non-court settlement routes to be considered and room to be made for alternative mechanisms that allow quick, cost-efficient, creative solutions, analyze the full context and understand the needs of the parties and of the industry. Therefore, the use of either general or industry-specialized ADR mechanisms is something that stakeholders in the OTT service industry can consider. These reflections are more than theoretical, having already been put into practice in certain mediation and arbitration cases submitted to the WIPO Center.

Likewise, in the public context, many copyright offices and laws in the WIPO Member States provide for mechanisms and procedures for copyright dispute resolution.<sup>33</sup> In this framework, the WIPO Center actively collaborates with the Member States and several of IP offices to develop mechanisms that meet these needs in the digital sphere.<sup>34</sup>

Lastly, it should be mentioned that, at the time of writing, the WIPO Center is conducting a global survey on the use of ADR mechanisms for disputes concerning digital copyright and content between companies, including OTT services, which will offer an insight into this type of dispute in different jurisdictions.<sup>35</sup> It will also allow the potential development of other types of dispute resolution mechanisms tailored to the needs of this industry.

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<sup>33</sup> For instance, the WIPO Center has collaborated with Latin American IP offices, including the National Directorate of Copyright of Colombia, the National Institute of Copyright of Mexico and the National Copyright Office of the Dominican Republic. It also collaborates with the Ministry of Culture, Sports and Tourism (MCST) of the Republic of Korea. All these countries have ADR systems that aim to reduce the impact of copyright disputes, including—increasingly—disputes between stakeholders in the OTT service industry.

<sup>34</sup> See: <https://www.wipo.int/amc/en/center/specific-sectors/ipoffices/index.html>

<sup>35</sup> Several of the comments and statements made in this article are a result of the interviews being held, at the time of writing, with attorneys, collecting societies, platforms and other companies in the sector, as part of the “WIPO-MCST Survey on the Use of ADR Mechanisms for B2B Digital Copyright- and Content-related Disputes”. Available at: [https://www.wipo.int/amc/en/center/copyright/copyright\\_survey.html](https://www.wipo.int/amc/en/center/copyright/copyright_survey.html). The report will be available at the end of 2020.

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