

## Victor ADR

While the others PCT, Madrid look at securing your IP rights abroad, here we look more to what, when things turn sour, when there is a challenge to exercise of your rights, then it is good to have an alternative dispute resolution procedure. I will only highlight some of the main features of our proposition, of the WIPO proposition here, hopefully it will look so good that you will look out for dispute just to taste it.

So a good marker in order to see what are the concerns of the parties that are linked by a contractual relation, is to look at their choice of dispute resolution clause, and WIPO ran a survey on what were the priorities of the parties in this context, and we found very important silent feature that parties are mostly interested in time and cost, and I think that is a general mantra for all types of disputes in IP and in other areas, so that will be the main thrust of my presentation, time and cost.

Of course there are other important issues, both for international contracts and domestic contracts, such as enforceability, quality of outcome, the neutrality of the firm, the confidentiality and here it's important to know that for international contracts, there are two issues which are more important than for domestic contracts, and these are enforceability and neutrality, and this is only natural because if you are distant from the other party in the contract, and far away also from the neutral, from the provider of the solution, it is only natural that you are concerned how I'm going to enforce resolution, a possible solution, and also is the neutral, is the provider of the solution going to be really neutral, I have to trust in my own courts, in my own jurisdiction but I don't know about a provider of solution which is not close at hand.

So WIPO and the solution that WIPO provides tries to address all these concerns, and it has been undertaken by means of the WIPO arbitration and mediation centre, which was created already a few years back, and that provides solutions in three different forms, mediation, arbitration and expert determination. And we move from the lighter approach to the more forceful approach, mediation the neutral brings the parties together so they can reach a settlement, so the settlement has the force of the contract and the intervention of the neutral is only just that of a facilitator. In arbitration it is different because the parties submit their dispute to a neutral, to an arbitrator or several arbitrators which issues a binding award, which is imposed on the parties, then expert determination is a very specific case in which the parties submit their difference of the dispute to an expert, that issues an opinion, a determination on the technical (08.30).

And then of course we have domain name dispute resolution, I will explain that a little bit in more detail, but the WIPO proposition is based on our nature as a specialist agency of the UN, we are a specialised, we have a large list of people that are experienced in IP and technology, so we can deliver informed results in an efficient manner. We are also a very flexible proposition in that we enable the parties to decide who are the neutrals, also what would be the language used, what would be the applicable law, where will be the follow, where will be based the neutral, so there is a large amount of flexibility which is important in time of disputes. Also our rules are tailored to the different types of disputes including IP issues of course and technology. And then again time and cost we have very competitive fees and we benefit being a UN agency from an assumption that we are intervening a neutral way. So we do not cover only intellectual property, we cover also other commercial disputes,

and this it's like you can see that one third of our disputes relate to patents, there's a strong representation also of trademarks but we have also a large number of ICT and commercial disputes as you can see.

So let me highlight some of the main features of our proposition, we prioritise time and cost, we being an international organisation cover mainly international disputes about three fourths of the disputes that we cover, we are very flexible as I mentioned in regard to different elements of the alternative dispute resolution, we have a large list of mediators, 1500 specialised in different areas. Also some from the region, some from New Zealand, covering different languages, covering different specialities, different expertise in IP and other areas.

We range, we cover different amounts in disputes from \$20,000 USD to \$1billion USD in our experience, and one important issue is that of enforceability, there is a convention, the New York Convention that looks after the enforceability of international awards, and actually it's much easier to enforce an international award and an international decision.

What about confidentiality, that is also very important in the IP and IT domains, if you go into a court procedure, the proceedings, the decision, the fact even that you are engaging in a court proceeding will be known, or might be known whereas in ADR there is a large extent of confidentiality that benefits both parties, and this is especially important in IP because IP is based on the collaboration between partners in order to undertake exploitation of IP rights, so you may want to preserve that commercial relation and not let it spoil just because of a dispute that might be punctual.

So let me say a word about our services in the field of domain names which are especially well known, WIPO created in 1999 an international administrative procedure, the UDRP, Uniform Domain Name Dispute Resolution Policy, it allows trademark owners to resolve clear cut cases of abusive domain name use and registration, it's significantly cheaper and quicker, time and cost than court litigation, it costs, no there is a fixed fee, it costs always \$1500 USD and it lasts on average two months, and it benefits also from an electronic filing procedure. We have 16 years experience and we have covered so far 36,000 WIPO cases, and it is still growing in the new data that was already announced by my colleagues, we can see that there is a 10% increase this year in the cases covered by WIPO in the UDRP. The parties are as wide almost as the UN extend and the number of countries, and we operate in many different languages. We have developed very useful resources that are available online, including a provincial overview of selected questions, and also an index of UDRP decisions.

We basically have cases in all areas where trademarks are protected in the internet environment. You see that the spread out is very diverse and covers many different types of activity. Let me just set very briefly a short example as conclusion, this is an example of a case where we have an agreement between a European airline and a US software developer, this agreement is to develop a worldwide platform for the management of ticket sales, which is of course indispensable for the operation of an airline online these days. This agreement in 2012 was followed another agreement on maintenance and support services, and the choice of the clause of the dispute resolution clause was one that we often favour, this is to start by the light approach mediation, and in case of failure of mediation to move towards more straight forceful intervention in the form of arbitration. So the problems started in the area of the scope of the maintenance or support agreement, and these problems led to the airline to terminate the agreement, and the software company to respond by requesting that the software be

returned, which would have made the operation of the airline impossible, so the airline initiated a mediation and as a consequence of this process, of this procedure a new license was granted in the areas where there was some uncertainty, and this shows the beauty of ADR because it is not so bound but the little, the little outlook of stature you can develop more creative solutions by developing new licenses for example.

And I would like to conclude by listing some of the points of information for ADR, including how to issue a query online, also where you can find the rules, the neutrals, the case examples and other clauses, also specific information on UDRP and how to subscribe to our newsletters informing you of developments in the field of alternative dispute resolution, so thank you very much.

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