

WIPO Alternative Dispute Resolution (ADR) for Art and Cultural Heritage

 wipo.int/amc/en/center/specific-sectors/art



As part of the WIPO ADR Services for Specific Sectors, the WIPO Center provides dispute resolution advice and case administration services to help parties resolve disputes arising in the area of art and cultural heritage, without the need for court litigation.

Art and Cultural Heritage Disputes

Art and cultural heritage disputes can involve a variety of highly specific subject matter such as copyright, traditional cultural expressions, authenticity or cultural property. They can also involve sensitive non-legal issues of a commercial, cultural, ethical, historical, moral, religious, or spiritual nature. Parties in such disputes are often from different jurisdictions and cultural backgrounds.

Due to their flexibility and confidential nature, ADR mechanisms allow consideration of such issues and help parties to adopt sustainable, interest-based solutions that may go beyond monetary relief (e.g., compensatory provision of art works, long-term loans, co-ownership). Where indigenous communities are involved, ADR procedures may also provide a forum in which customary laws and protocols can be considered. ADR mechanisms allow parties to choose a mediator, arbitrator or expert with specific expertise in art and cultural heritage and understanding of the cultural backgrounds and/or the specificities of the art market. They provide a neutral forum in which an international art and cultural heritage dispute can be resolved through a single procedure.

Selected Areas of Dispute

- access and benefit sharing
- appraisals
- art as collateral in financing transactions
- art fairs
- artist commissioning
- artist representation
- authenticity
- collection
- consignment
- copyright agreements
- digitization
- documentation
- donation
- droit de suite (resale)
- exhibition
- hidden defects

- insurance of art works
- loans
- management of art collections
- misappropriation of traditional cultural expressions
- misuse of traditional cultural expressions
- ownership
- provenance
- representation
- reproduction
- restitution, return or repatriation
- restoration
- sale/purchase
- storage
- transportation
- use of traditional cultural expressions

Potential Stakeholders to Disputes

- academic institutions
- anthropologists
- archives
- art advisors
- art dealers
- art fair organizers
- artists
- appraisers

- auction houses
- banks
- collectors

- finance institutions
- freeports
- galleries
- indigenous communities
- industry
- insurance companies
- libraries
- museums and other cultural institutions
- states
- transportation companies

WIPO ADR Services for Art and Cultural Heritage

Administration of Art and Cultural Heritage Disputes

The WIPO Mediation, (Expedited) Arbitration and Expert Determination Rules are well suited for art and cultural heritage disputes.

The WIPO Rules are flexible and can also be applied in disputes that are not limited to intellectual property. In its role as administering institution, the WIPO Center maintains strict neutrality and independence.

Examples of WIPO mediations in this area include cases relating to restitution claims, the authenticity of a painting and ownership of art works.

Examples of WIPO arbitrations in this area include:

- WIPO Expedited Arbitration Relating to an Artistic Production Finance Agreement,
- WIPO Arbitration of an Artist Promotion Dispute

By way of further example, the WIPO Center has carried out its “good offices” in a matter between a museum and an indigenous community concerning the restitution of a cultural object, as well as related intellectual property issues.

WIPO Art and Cultural Heritage Panel of Neutrals

Effective proceedings to a large extent depend on the quality of the mediator, arbitrator or expert. The WIPO Center maintains an open-ended Panel, including mediators, arbitrators and experts from around the world with expertise in art and cultural heritage. They can be appointed by parties in cases under WIPO Rules but parties are also free to select mediators, arbitrators or experts from outside the WIPO Panel.

Procedural Guidance and Training

The WIPO Center makes available recommended contract clauses and submission agreements that parties can use to submit their disputes to ADR.

Upon request, the WIPO Center provides procedural guidance to interested parties and organizations in the art and cultural heritage sector. This includes advice on the drafting and adaptation of ADR clauses in art and cultural heritage related contracts and submission agreements, as well as helping to bring disputing parties to ADR.

The WIPO Center also organizes training and workshops on mediation, arbitration and related topics.

Establishment of Adapted ADR Frameworks

Where appropriate in light of the needs of the relevant stakeholders, the WIPO Center provides guidance in the establishment of adapted ADR frameworks, including fees and clauses, and provides administrative services thereunder.

Collaborations

With Concerned Stakeholders and Entities

To optimize dispute resolution in the art and cultural heritage sector, the WIPO Center collaborates with relevant stakeholders and organizations. This may include organization of joint events and training, and establishment of adapted ADR frameworks, and involves for example the following:

International Council of Museums (ICOM)

The WIPO Center is available to collaborate with other interested stakeholders.

With Other WIPO Divisions

In the art and cultural heritage sector, the WIPO Center collaborates in particular with WIPO's Program on Intellectual Property, Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions, and with WIPO's Copyright Program.

WIPO ADR Services for Art and Cultural Heritage are operationally distinct from and without prejudice to ongoing normative discussions in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) and elsewhere. The WIPO ADR service is intended as a voluntary and complementary mechanism and does not substitute or interfere with ongoing IGC discussions.

Selected Resources and Events

Selected Resources

- Report on Copyright Practices and Challenges of Museums, by Dr. Yaniv Benhamou, WIPO Standing Committee on Copyright and Related Rights, SCCR/38/5, 2019, on dispute resolution see pp. 28-29.
- Intellectual Property and the Safeguarding of Traditional Cultures - Legal Issues and Practical Options for Museums, Libraries and Archives, written for the World Intellectual Property Organization (WIPO) by Molly Torsen and Jane Anderson, WIPO Publication No. 1023(E), 2010, on dispute resolution see pp. 62-66.
- WIPO Guide on Managing Intellectual Property for Museums, by Rina Elster Pantalony, WIPO Publication 1001(E), 2013, on dispute resolution see Chapter 2, paragraph 2.7.
- Alternative Dispute Resolution in Art and Cultural Heritage - Explored in the Context of the World Intellectual Property Organization's Work, by Sarah Theurich, in Kerstin Odendahl, Peter Johannes Weber (Eds.), Kulturgüterschutz - Kunstrecht - Kulturrecht, Festschrift für Kurt Siehr zum 75. Geburtstag aus dem Kreise des Doktoranden - und Habilitandenseminars "Kunst und Recht", Schriften zum Kunst- und Kulturrecht, Nomos Verlag, Baden-Baden, 2010, Volume 8, pp. 569-594.
- Art and Cultural Heritage Dispute Resolution, by Sarah Theurich, WIPO Magazine, July 2009, Issue 4, pp. 17-19.
- "Mediation as an Option for Resolving Disputes between Indigenous/Traditional Communities and Industry Concerning Traditional Knowledge", by J. Christian Wichard and Wend B. Wendland, in Barbara T. Hoffman (ed.), Art and Cultural Heritage: Law, Policy, and Practice, Cambridge University Press, 2005, pp. 475-482.
- Bibliography on Intellectual Property Arbitration and Mediation

Events

Date	Event	Location	Type of event	Language
September 2, 2021	Online Course on Copyright, NTF (Non-Fungible Tokens) and Art Market	Brazil	Virtual	Portuguese/Spanish
April 16, 2021	<u>Art Disputes and Mediation - Art & Médiation ou autres MARD</u>	France	Virtual	French
December 11, 2020	<u>When Museums Go Online - The Law & Digital Cultural Heritage Day.</u>	Switzerland	Virtual	English

October 3, 2018	<u>SIA-WIPO Joint Symposium on ADR for Art and Cultural Heritage Disputes</u>	London, United Kingdom	In- person	English
June 14, 2018	<u>Seminar on Arbitration and Mediation in Art and Cultural Heritage</u>	Madrid, Spain	In- person	Spanish
September 26, 2017	<u>SIA-WIPO Joint Symposium 2017: ADR for Art and Cultural Heritage Disputes</u>	New York, United States of America	In- person	English
May 10 and 11, 2012	<u>ICOM-WIPO Workshop for Mediators in Art and Cultural Heritage</u>	London, United Kingdom	In- person	English

Contact

WIPO Arbitration and Mediation Center (Geneva)

34, chemin des Colombettes
1211 Geneva 20
Switzerland

T +4122 338 8247

F +4122 740 370

WIPO Arbitration and Mediation Center (Singapore)

Maxwell Chambers Suites
28 Maxwell Road #02-14
Singapore 069120

T +65 6225 2129

F +65 6225 3568

For additional information arbiter.mail@wipo.int
