



Dispute resolution models

Some brief comments

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Negotiations



- Always based on consent between the parties (may be governed by original contract)
- Result have to be accepted by the parties
- Applies as contract between the parties
- If inconclusive, no solution is reached

Mediation



- Always based on consent between the parties (may be governed by original contract)
- Negotiations or dialogue directed by third party (referee)
- Referee may propose solutions
- If proposals rejected, no solution is reached if parties have not contracted for acceptance

Arbitration I



- Alternative to litigation, typically based on legislation
- Based on contract between the parties, formal restrictions often apply
- Contract specifies forum, law of forum (*lex forum*) govern proceedings
- Contractual choice of law generally accepted, may be different from *lex forum*

Arbitration II



- Panel named according to procedural provisions in contract or legislation
- Typically the parties each name one panellist, these name a chair – or chair named by specified institution (court)
- Decision binding upon the parties
- If compliant with New York convention, executed in another country party to the convention

Arbitration III



- Advantages of arbitration:
 1. Speedy dispute resolution
 2. Only one instance
 3. Control of expertise
 4. Control of procedures and time
 5. Control of costs
 6. Confidentiality
 7. International execution (if qualified)

Arbitration IV



- WIPO dispute resolution for domain names
example of arbitration
- Based on contract
- Executed by registrar (self executing)
- Probably not qualify according to New York convention
- May be challenged by national courts
- Reputation of WIPO important for international acceptance

Consumer tribunals



- Dispute resolution mechanisms typically based on self-regulation (government support)
- Simplified and low-cost procedure
- Decision in principle not binding, but followed by consensus
- Decision only executed within jurisdiction
- Attempts to introduce consumer tribunals for international electronic trade

Litigation



- Based on legislation
- Any party with a qualified interest in a dispute may bring civil action before a court
- The court will typically uphold contractual clauses, including arbitration clause, choice of forum and law
- Decision only executed by authorities of the country of the forum, but there are conventions for international execution of decisions in civil cases

Small claims courts



- Simplified procedures for small claims
- Varies widely between jurisdictions
- May be special tribunal, may be special procedure before the general courts
- Many examples of high level of computerisation

Challenges for string evaluation



- Parties to the dispute not bound by contract
- Courts of several countries may have jurisdiction
- Execution in practice depend on presence within the jurisdiction
- Uncertain relation to ICANN policies and contracts
- Recognition of decisions by alternative dispute resolution in practice rely on reputation and consensus
- Few international "civil courts" – treaties rarely introduce dispute resolution between individuals
- WTO dispute resolution exceptional, only between states

Categories if dispute scenarios



<i>Parties</i>	<i>Permit restricted string</i>		<i>Restrict permitted storing</i>		<i>Transfer rights to string</i>	
	<i>Jurisdictions</i>					
	Both within	Two different jurisdiction	Both within	Two different jurisdiction	Both within	Two different jurisdiction
Both parties private						
Both parties government						
Appealing party government						
Appealing party private						