Dispute resolution models
Some brief comments

Jon Bing
GNSO Lisbon
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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 of dispute scenarios

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<thead>
<tr>
<th>Parties</th>
<th>Permit restricted string</th>
<th>Restrict permitted storing</th>
<th>Transfer rights to string</th>
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<tr>
<td>Jurisdictions</td>
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