

ALTERNATIVE RESOLUTION OF INTELLECTUAL PROPERTY DISPUTES

Alena Macková*

Abstract: *The article deals with the alternative dispute resolution as a perspective and proper way on how to settle disputes and why it is proper for an intellectual property dispute settlement also as an amicable method.*

The author comments on the different approaches to the alternative dispute resolution in different jurisdictions (should it be also the arbitration the alternative dispute resolution method or not and why).

The nature of the alternative dispute resolution and its roots are analysed briefly, then the methods of the alternative dispute resolution are described individually to find if and why individuals may benefit from it when properly used. The best international practice and its promotion from relevant authorities and agencies (like WIPO and UNIPO) is reminded and described as well.

Author also comments on special elements of the intellectual property disputes and its typology in the “new technology governed and connected world”. Under consideration are especially the costs and benefits of an alternative dispute resolution and the author suggests, based on relevant arguments (both jurisprudence and practise provided) and thus concludes the alternative disputes settlement should be considered as a perspective way how to settle a dispute and it should be promoted and used widely as international practice shows and confirms its advantages.

Keywords: *Intellectual Property, Intellectual Property Dispute, Intellectual Property Rights Protection, Litigation, the Alternative Dispute Resolution, the Methods of the Alternative Disputes Resolution, Mediation, Arbitration, Conciliation*

INTRODUCTION

This article deals with the issue of how properly, without loss either private or public resources and funds (time and money saving), is possible to settle disputes arising from different kinds of intellectual property relations and rights.

In this article an author refers to private law tools of the protection of the intellectual property only (no criminal and administrative law regimes are considered).

The author conclusions insist in long-winded, good and thus verified experience with alternative disputes resolution in the different countries with different legal roots, frames and culture. This experience shows the doubtless benefits when any method of alternative disputes resolution is applied (either in complex or easy private or business cases).¹

The author at first gets nearer to the dispute resolution (its nature) in transnational perspective, due to an intellectual property issues and cases frequently exceeding the borders of the countries. As an example, we may provide the use of the artwork in the

* Professor, JUDr. Alena Macková, Ph.D., Department of Civil Law, Faculty of Law, Charles University, Prague, Czech Republic. ORCID: 0009-0003-8615-8422.

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¹ As an example we may refer to a resilient and robust system of the protection of the rights of the consumers provided by Direction 2013/11EU of the European Parliament and of the Council of 21May 2013 on alternative dispute resolution for consumer disputes.

social media.² Thus intellectual property rights and the need of its protection might easily arise and be explored wherever, depending on technical background only in recently connected world.

At first, the nature of the alternative dispute resolution as a doctrine approach and as well the practical experience (in transnational perspective) is briefly reminded. The Czech jurisprudence thus may also easily confirm worldwide gained knowledge and practice which is verified with no doubt approach to settlement of private law disputes.³ Not only by legal science, but also by Czech legislator was this approach and fact reflected into a (written) law.

Hereby we remind the main forms of the alternative dispute resolution (negotiation, conciliation, mediation and arbitration), its nature, costs and benefits, as a forms, which are recognized, considered and supported also in transnational practice (by World Intellectual Property Organization) or International Chamber of Commerce (Paris, Geneva, New York) as well as by EU authorities.

Then, the article deals with the court protection of the intellectual property, costs and benefits and current limits, which might significantly affect the level of the proper protection, particularly when the speed of the litigation (time and money saving) is considered. The Czech experience in this field is zooming briefly as it is a pattern and paradigm of one of the European law and practice approach. Even when the Czech law is strengthening the protection of those kinds of rights by special tools (for example, the option to secure the relevant evidence for the next possible litigation) there still might be a wastage of time and money due to a deficiency of the experts and their expertise and opinion as explained later.

The specifics of the intellectual property cases are the further subjects of exploration of the article.

In the last part of author's consideration, the author tries to provide any evidence supporting the statement, the alternative dispute resolution is the proper suitable way for the settlement of intellectual property cases and answers this main objective of her analyse.

I. THE ALTERNATIVE DISPUTE RESOLUTION - ITS NATURE IN THE TRANSNATIONAL PERSPECTIVE

- a) The nature of alternative dispute resolution might be stated as follows. The alternative dispute resolution methods present a proper element of the protection of rights or – better said – of the peaceful settlement of disputes, more speedy and costs effective than litigation in the court.⁴

² See Authors Guild, Inc. v. Google, Inc. 804 F.3d 202 (2nd Cir.2015), resulting in “fair use” rule.

³ MACKOVÁ, A. In: WINTEROVÁ, A., MACKOVÁ, A. a kol. *Civilní právo procesní, část první, 10. vydání*. Praha: Leges, 2025, pp. 591 and following; MACKOVÁ, A. *The Civil Procedure in the Czech Republic*. Alphen aan den Rijn: Wolters Kluwer International, 2023.

⁴ In: *European Commission* [online]. [2025-10-09]. Available at: <https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/resolve-your-consumer-complaint/alternative-dispute-resolution-consumers_en>.

We hereby recognise a dispute (extensively apprehended) not only as a legal *inter partes* issue, but as well as a social influencing situation consuming time and money (also a public budget and a capacities of the public authorities).

Thus the question is, if there is a reasonable way to settle a dispute without those side negative effects out of court intervention. Even when we respect all the effects of the (court) judgment and its following necessary enforcement procedures with its time and money costs (both public and private).

Alternative dispute resolution (like e.g. mediation, conciliation, arbitration, negotiation in the transaction as the most famous of them)⁵ is recently embodied in the law systems of many countries (Austria, Germany Italy, Netherlands, United States, Great Britain, and some countries in Asia etc.). Thus, we may consider it as commonly acknowledged by practice and jurisprudence, as an organic element of the law and comprehensive to the protection of the rights.⁶

Even there was a different approach to the arbitration previously by British and American jurisprudence and legislation,⁷ both jurisprudence and practice, considered later the general applicability and appropriation of arbitration.

The recent decision of the Court of Appeal (GB) even caused an amendment of the Civil Procedure Code (GB), which might be recognised as a new period towards the implementation an promotion of the alternative disputes resolution as a “mandatory” approach to cases: “the courts can thus order parties in civil proceedings to engage in alternative dispute resolution (“ADR”), where it does not impair the very essence of the parties’ right to a fair trial, and is proportionate to achieving the legitimate aim of settling the dispute fairly, quickly and at reasonable cost”.^{8,9}

To support our assertions that alternative dispute resolution is widely accepted and recommended way how to achieve a dispute settlement and thus the protection of the rights, we may also present an approach of the International Chamber of Commerce, whose activities historically and broadly support alternative dispute resolution as a necessary step to promote new business models and to reflect new technology development in society.¹⁰ The strong promotion of mediation (among many others methods) by the International Chamber of Commerce should be stressed in our context.¹¹

⁵ In: *Cornell Law School* [online]. [2025-06-21]. Available at: <https://www.law.cornell.edu/wex/alternative_dispute_resolution>.

⁶ MACKOVÁ, A. In: WINTEROVÁ, A., MACKOVÁ, A. a kol. *Civilní právo procesní, část první, 10. vydání*, pp. 591 and following; MACKOVÁ, A. *The Civil Procedure in the Czech Republic*.

⁷ In: *legislation.gov.uk* [online]. [2025-10-09]. Available at: <<https://www.legislation.gov.uk/ukpga/2025/4>>.

⁸ In: *Cornell Law School* [online]. [2025-06-21]. Available at: <https://www.law.cornell.edu/wex/alternative_dispute_resolution>; a Court of Appeal (VB) *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416[1].

⁹ In: *Becket Chambers Barristers* [online]. [2025-06-21]. Available at: <<https://becket-chambers.co.uk/articles/mandatory-alternative-dispute-resolution-adr/>>.

¹⁰ In: *International Chamber of Commerce* [online]. [2025-06-21]. Available at: <<https://iccwbo.org/dispute-resolution/dispute-resolution-services/>>.

¹¹ In: *International Chamber of Commerce* [online]. [2025-06-21]. Available at: <<https://iccwbo.org/dispute-resolution/dispute-resolution-services/adr/mediation/>>.

b) The alternative dispute resolution methods in Czech and Transnational Law and Practice:

As it was already mentioned, the jurisprudence (British and American) may differ in approach to the arbitration as an alternative dispute resolution method due to its level of formality etc. In this context we may show the Czech approach to this issue at first.

Czech procedural law and science has for a relatively long time recognised arbitration as a kind of civil procedure. This opinion is based on the fact, that arbitration has a lot of common elements with litigation (e.g., arbitral award's effects), but still, it leads the dispute away from litigation because the arbitral contract excludes the power of the court (since another will of the parties is manifested), when there is such a common will of the dispute's parties.¹²

Nevertheless, we may conclude, the arbitration is the relevant form of an intellectual property dispute solution and better settlement under recent Czech law. The parties to the dispute may benefit from this form of dispute settlement like by e.g., non-public proceeding, the expertise of the arbitral court or arbitrators etc. For to support this conclusion we may provide concrete international experience.^{13,14} Of course, the arbitrability of a concrete issue arising from intellectual property relation and problem must be tested in every case under the law even if there is a strong world-wide development (see new amendment for arbitrability of intellectual property laws in Singapore or Hong Kong). The Czech Arbitral Court (The Arbitration Court attached to the Czech Chamber of Commerce and the Czech Agrarian Chamber), established in 1949, is one of the three Czech Arbitration Courts with more than 600 distinguished arbitrators and provides such proceedings and as an evidence of its general respect we may provide a statistics.¹⁵

What alternative dispute resolution methods may we consider in a general view besides an arbitration?

There are a lot of criterions we may consider to distinguish between different alternative dispute resolution methods. Some of them include: the level of the formality of the method, if it's applicable generally, or just for some fields of disputes (e.g., FIDIC rules).¹⁶

We may now briefly refer to the recent Czech legal regulation of the alternative resolution which might provide an introduction on how to recognise different methods of the alternative dispute resolution.¹⁷

The Civil Code¹⁸ as a code of private law is not promoting alternative dispute resolution generally and stipulates the court protection of the rights as the primary way how to protect the rights (within the constitutional principles of fair trial right). However, in

¹² WINTEROVÁ, A., MACKOVÁ, A. a kol. *Civilní právo procesní, část první, 10. vydání*, pp. 591 and following.

¹³ In: *WIPO* [online]. [2025-06-21]. Available at: <<https://www.wipo.int/amc/en/ neutrals/index.html>>.

¹⁴ In: *WIPO* [online]. [2025-06-21]. Available at: <<https://www.wipo.int>> - Pravidla arbitráže WIPO, a Pravidla WIPO pro zrychlený arbitráž, a Pravidla WIPO pro mediaci, latest version 2020.

¹⁵ The statistics of the court can be found at; In: *Rozhodčí soud* [online]. [2025-06-21]. Available at: <<https://www.soud.cz/statistika-soudu>>.

¹⁶ In: *WIPO* [online]. [2025-06-21]. Available at: <<https://www.wipo.int/amc/en/arbitration/rules/index.html>>.

¹⁷ Czech Republic have still not fully developed system of ADR methods (as to CEPEJ Justice Scoreboard 2023 evaluation shows).

¹⁸ Law No .89/2012 Sb., Občanský zákoník, as amended.

Czech Civil Code we will find any promotion of the amicable settlement of the dispute in connection to the limitation period.¹⁹

What a methods may parties choose in the Czech Republic?

Czech law explicitly stipulates mediation,²⁰ arbitration, and conciliation (as method of consumer rights protection).²¹ The parties may use other forms, which are commonly respected and used (like mini-trial, expert intervention, negotiation, expert determination etc. or hybrid as a med-arb. arb-med, med-aloa etc.).

In our focus on intellectual property issues we may also consider a special “mediator” for the disputes under the Czech Copyright Act, since 2022.²² The Czech law on trade marks regulates and thus provides both parties (the applicant and the those who demur and objects) the advantage of minimum two months’ time period to find any peaceful solution.²³

II. COURT PROTECTION OF INTELLECTUAL PROPERTY RIGHTS-CZECH PERSPECTIVE AND EXPERIENCE (AS WE ARE SEARCHING FOR AN EFFECTIVE DISPUTE RESOLUTION), WE SHOULD COMMENT COURT PROTECTION OF RIGHTS BRIEFLY AS WELL

Under Czech procedural law, the dispute arising from intellectual property²⁴ will be decided by one of the regional courts as a court of the first instance (not by district court which power in 1st instance litigation is a general rule under Czech Code on Civil Procedure).²⁵ A court of appeal will thus be one of the two High Courts (either in Prague or in Olomouc), an extraordinary appeal in such a case have to be submitted to Supreme Court.²⁶

As a significant example of the intellectual property dispute there is a controversy on who is the entitled person to provide a licence to “the Little Mole” character (world well-know character, and in 2011 the plush toy of the Little Mole was one of the Endeavour space shuttle space mission passenger accompanied by Andrew Feustel and it is recognized as a symbol of this mission, the science and education of children)²⁷ between the heir and administrator of the property of the deceased, which took more the eight years at courts and

¹⁹ See sec.647 and. following of the Czech Civil Code.

²⁰ See GRYGAR, J. *Zákon o mediaci*. Praha: Leges, 2014; DOLEŽALOVÁ, M., MATOUŠKOVÁ, A. *Evaluativní přístupy v mediaci*. Praha: Leges, 2024.

²¹ See e.g., Law on Mediation No.202/2012 Sb., Law on Arbitration No.216/1994 Sb., Law on Consumers Protection 634/1992 Sb., as amended.

²² Law No. 121/2000 Sb., as amended.

²³ See: Law No.441/2003 Sb., on Trade Marks, as amended, Sec.26b.

²⁴ We consider Intellectual Property broadly (as a all kinds of rights and duties arising).

²⁵ In: *epravo.cz* [online]. [2025-06-21]. Available at: <<https://www.epravo.cz/top/clanky/mestsky-soud-v-praze-o-umele-inteligenci-a-autorskem-pravu-117318.html>>.

²⁶ See decision No. 27 Cdo 2857/2019. In: *Právní prostor* [online]. [2025-06-21]. Available at: <<https://www.pravniprostor.cz/clanky/obcanske-pravo/nejvyssi-soud-cr-potvrdil-praxi-ohledne-autorskych-prav-k-architektonickemu-dilu>>.

²⁷ In: *newyork.czeandchcentres.cz* [online]. [2025-06-13]. Available at: <<https://newyork.czeandchcentres.cz/en/program/do-kosmu-s-krtkem>>.

was concluded by a mutual agreement out of court (the author of the character of the Little Mole died in 2011 and before his death there was more than 400 licence contacts generating relevant sums of money) and court litigation took more eight years. Another case might to prove the statement of the complexity of intellectual property cases as the application of the law and its procedural complexity is concerned. The decision of the Supreme Court on how to achieve a full protection of the rights to trademark under Brusel I bis Regulation, which took 2 years (the legal /procedural/ issue was just, when and under which conditions the court of the EU member state have indisputably power to decide the matter of the case).²⁸

We might not provide exact statistics and figures (this contemplation is not focused on statistics), and even when the length of the litigation is generally descending in the Czech Republic, the intellectual property cases still be one of longest as has been reported.

We cannot describe the exact recent length of those litigations (there are only the previous year's statistics available so far which provides average time and length of the litigation).

The length of the litigation is affected by many factors, like complexity of the issues (either material or procedural). Thus, it might be considered the longer lengths of a litigation in intellectual property cases which is time and costs consuming.

The reasons might be:

- the complexity of the subject matter of the litigation
- the issue of the originality of the artwork will be examine by an (out of court expert), due to the judge is legally educated person, no technical education is to be required for them thus they need an expert opinion for factual issues which causes the length of the litigation is increasing)
- there is real lack of experts in this field in general, and it results in the consequence there will be a delay in the delivery of expert evidence to the court – the Czech experience shows just a few subjects eligible to provide such an expertise like National Gallery, Academy of Fine Art, Heritage Authority and others the like. In some of fields of copyright it would be troublesome to find any person or subject to provide an expertise and to answer the relevant intellectual property questions relevant for the equitable and rightful judgment of the court to provide a proper legal protection of rights
- there is (more frequently nowadays) a lot of transnational issues connected (courts have to consider which law, either substantive or procedural,²⁹ have to be applied for to the judgment, as to be recognised and enforced abroad for to provide a proper transnational needed protection etc.

As an example of the inappropriate length of the litigation might be show case on the translation and the use of the translation of the famous Oscar Wilde work “The Importance of Being Earnest” into Czech language and the further use of the translated title used by a translator. This case started in 2012 and was closed by the Supreme Court in 2021.³⁰

²⁸ See decision of the Supreme Court No. 30Cdo638/2016.

²⁹ As an example of those issues we may exemplify the application of Bern Convention for the protection of Literary and Artistic Works (1886), in particular, which version shall be applied and also we have to consider all the issues connected to the proper transposition and application of number of number of Directives (like No 93/83, 96/9, 2001/29, 2001/84, 2004/48, 2006/115, 2006/116, 2009/24, 2011/77, 2012/28, 2014/26, 1017/1564, 2019/789, 2019/790) and Regulations (like No. 2017/1128, 2017/1563) when we consider the EU only.

³⁰ See decision 27Cdo 2023/202. In: *Nejvyšší soud* [online]. [2025-09-13]. Available at: <<https://sbirka.n soud.cz/sbirka/15067/>>.

Even, if the case is simple (either the law or the factual circumstances of the case) we may conclude, alternative dispute resolution is better way for the dispute resolution. This statement should be however supported by some facts. Besides any other reasons, we may confirm this statement by the nature of the alternative dispute resolution which provides the parties the power to settle the rules, the persons, the lengths, the costs and other elements how the case will be handled and by whom.

Experience shows, that e.g. mediation is proper way for an amicable settlement because issues arising from the breaching intellectual property rights. This rights have to be settled with the future in mind because the parties will coexist and future cooperation is not excluded, which is not easy to make after the directive and authoritative judgement was issued. A judgment is issued to repair all the damage caused but to prevent a future breaching is task hardly to be accomplished fully by this court tool. The nature of the rights of authors and other right holders exist for long time period, the duration of the rights and its protection is long (decades). If there is such a long time perspective of existence of the relations and the risks of its harming or breaching, we may always consider a mutual agreement as a better solution than a judgment which covers just a concrete recent topical issue.

III. THE INTELLECTUAL PROPERTY DISPUTE SPECIFICS

Hereby we consider an intellectual property disputes a cases arising from the broad spectrum of relations connected to intellectual property which is e.g., (explained by the World Intellectual Property Organization of the United Nation – in accordance with the jurisprudence)³¹ as a: creation of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce (patents, copyright, trademarks, industrial designs, geographical indications, trade secrets).³²

All those are complex issues and have a strong influence also on society (science, nature, economics, health, and other developments). The material complexity of the issues manifests in the disputes arising and in its complexity.

Hereby, in another, context we show some examples of oddity and specialty of those cases which is confirmed by historical experience also. At this context we may mention the reform of Czech legislation (of 1846) made in 1886, which was motivated by the development of the issues how to form the borderlines between law and arts.

Some resources provide that it all started ages ago, when there was a dispute on the copy (or copies) of the book which might broaden the text to the more readers. And also the dispute on the pictures of Oscar Wilde took by the brothers William and Daniel Downey might be mentioned.³³

Nowadays, a speedy technological development of the society brings a new quality and a form of the works and multiply the ways of spreading of those works and at the same time the increasing of its potential harming or breaching.

³¹ See e.g. HOLCOVÁ, I. and others. *Autorský zákon a předpisy související (včetně mezinárodních smluv a evropských předpisů)*. Komentář. Praha: Wolters Kluwer, 2019.

³² In: *WIPO* [online]. [2025-06-21]. Available at: <<https://www.wipo.int/publications/en/details.jsp?id=4528>>.

³³ In: *National Portrait Gallery* [online]. [2025-09-15]. Available at: <<https://www.npg.org.uk/collections/search/portrait/mw304294/OscarWilde?LinkID=mp04826&search=sas&sText=Oscar+Wilde&role=sit&rNo=5>>.

As another chapter in intellectual property issues (either for jurisprudence or practice) might be considered an artificial intelligence (further AI). This further development brings a new quality of relation between the human and technique and technology and at the same time also new kinds of moral and legal consideration. With all due respect with alternative dispute resolution benefits, we have, at the same time, respectfully conclude that some basic legal issues (with ethics and moral repercussions and consequences) wait for the approach of the highest court bodies (either national or transnational, like European Court of Human Rights, Court of Justice of European Union, US federal courts etc.), while the AI is used by recent justice's systems as tool also (not only as a subject of decision making).³⁴

IV. ARE THE ALTERNATIVE DISPUTE RESOLUTION METHODS A PROPER SUITABLE AND APPLICABLE WAY FOR THE INTELLECTUAL PROPERTY DISPUTES?

Now we may proceed to the main objective of our contemplation and to conclude if the alternative property rights are the proper, suitable and applicable way to settle an intellectual property case.

As we consider whether alternative dispute resolution is a proper way how to settle intellectual property dispute, we have to refer again to transnational approaches and practice and to remind our previously provided consideration, examples and approaches.

As an example, we will show and provide European and World activities and experience of two leader subjects like European Union Intellectual Property Office (furthermore as EUIPO) and World Intellectual Property Organization (furthermore as WIPO) as a transnational agencies that serves authors, creators and thus promoting innovation and “travelling” of ideas also in the field of promotion of the mediation.

Thus, in our context we may show a practice of and its activity in this field. The Mediation Centre of the EUIPO³⁵ was established as a specialised in intellectual property issues.³⁶

A basic principle of the mediation is voluntariness, if there is such a will and volunteerism, the parties may also use the services for copyright law issues of the EUIPO. Thus, the parties may use a full service of experienced and specialised persons with a professional reputation record which might be tested easily. So, if there exist any specialised, experienced and professional support with transnational fame and respect, we may hardly conclude the mediation is not suitable. We may hardly refer to concrete cases due to its confidentiality of the mediation, which is one the main benefit and character. Which make our reasoning extremely and challenging.

³⁴ In: *Federal Judicial Center* [online]. [2025-09-15]. Available at: <<https://www.fjc.gov/subject/artificial-intelligence>>.

³⁵ Nařízení Evropského parlamentu a Rady (EU) 2017/1001 ze dne 14. 6. 2017 o ochranné známce Evropské unie.

³⁶ In: *EUIPO* [online]. [2025-06-21]. Available at: <<https://www.euipo.europa.eu/cs/mediation-centre/overview-and-services>>.

Besides, we may refer also to practice of WIPO and its specialised WIPO Arbitration and Mediation Center also as a specialised intellectual property body.³⁷ For the recommendation for the use those services we may provide the same points as were mentioned in context of the Mediation Centre of the UNIPO, just an extra-European scope and range of the experience and knowledge should be stressed out.

CONCLUSION

This contemplation was focused on a refresher on the specifics of intellectual property as well as the specifics of the intellectual property disputes and litigation. The author then made an analyse if the alternative disputes resolution might be or might not be the proper way how to settle intellectual property disputes not only in national perspective, but even in transnational perspective.

Under the authors consideration, the intellectual property disputes (mentioned in detail) call for an amicable and peaceful solution albeit be applied. An alternative dispute resolution provides a lot of benefits suitable for those kinds of disputes like voluntariness, the parties may influence the rules, the place, the intervening persons, length, law and other features of the chosen proceedings.

As another supplement, the author also refers to the transnational practices of the WIPO and EUIPO with its experience record, confirming its specialisation and professional full service.

As submitted hereinabove, the author finds the nature and the experience with alternative dispute resolution methods as a fully exploitable for intellectual property disputes due to its specific demands and thus as future model of functioning solutions.

³⁷ In: *WIPO* [online]. [2025-06-21]. Available at: <<https://www.wipo.int/amc/en/>>.