

21 Introduction

This part of the Manual looks at what may be broadly described as 'online dispute resolution' (ODR) in two areas: international trade and intellectual property.

The specific area of international trade to be considered is documentary credits (or letters of credit), which have been described as the life-blood of commerce. The International Chamber of Commerce (ICC) operates a system designed to resolve disputes concerning documentary credits speedily and cost-effectively: the Documentary Credit Dispute Resolution Expertise (DOCDEX) system, which was mentioned briefly in the previous chapter.

The specific area of intellectual property to be considered is domain name disputes. The United Nations World Intellectual Property Organization (WIPO) has instituted a system to deal with the problem of what is commonly referred to as 'cybersquatting': the abusive registration of Internet domain names.

There are a number of differences between the dispute resolution systems considered here and the systems dealt with in the earlier Parts of the Manual:

- The first and most obvious difference is that the communication systems they rely on can broadly be described as 'electronic'. The ICC DOCDEX system requires communications to be by way of *"teletransmission or other expeditious means"*. The WIPO system requires communications to be *"by telecopy or facsimile transmission... by electronic mail (e-mail)... or where both parties agree, through the Center's Internet-based case filing and administration system"*.
- The second difference relates to hearings. In complex international arbitration cases, hearings are inevitable. In the case of the DOCDEX system a hearing is ruled out completely. In the case of the WIPO domain name system a hearing can only take place in exceptional circumstances – and then only at the discretion of the WIPO Domain Name Panel.
- A third distinguishing feature of the two systems is the speed with which a decision is to be delivered. In the case of DOCDEX the draft decision is to be ready within 30 days of the panel – the Appointed Experts – obtaining the information and documents that they require. In the case of a WIPO panel the decision is to be available within 14 days of the appointment of that panel.

These factors – primarily electronic communications, no hearings and speedy panel decisions – enable both the DOCDEX and WIPO systems to achieve their twin aims of being low cost and able to resolve disputes quickly.

The use of the Internet in commercial dispute resolution is a comparatively recent development. In an article published in 1999, this writer raised the question of whether electronic commerce would lead to the development of dispute resolution processes that make use of the Internet:¹⁰⁹

109 Anthony Connerty, 'Electronic Commerce: A United Kingdom View', *E-Commerce: Special Issue of International Company and Commercial Law Review*, Sweet and Maxwell, 1999.

“Could the costly and time-consuming processes involving physical arbitration hearings be replaced by on-line electronic dispute resolution processes? Will we see the emergence of the cyber arbitrator?”

“The ICC may already have shown the way to resolve cross-border disputes swiftly and cost effectively without the necessity for physical meetings. In October 1997 the ICC published the DOCDEX Rules: the ‘Rules for Documentary Credit Dispute Resolution Expertise’. The system is made available through the ICC’s International Centre for Expertise in Paris.... Three ‘appointed experts’ are to draft a decision which is to be submitted to the Centre within 30 days. That decision is based on documents only. The Rules state that the parties may not seek an oral hearing in front of the appointed experts....

“In all probability the three experts will be from three different countries. There is no requirement in the DOCDEX Rules that they should physically meet. The communications between the experts for the purpose of arriving at their decision can therefore be by telephone, fax or e-mail. The way is obviously open for on-line communication between the experts.”

The writer then went on to consider a system that was then being proposed by WIPO:

“The World Intellectual Property Organization is one of a number of specialised agencies operated by the United Nations. For some time WIPO has been working on an on-line dispute resolution system aimed at dealing with domain name disputes. Draft Rules issued in 1997 contain provisions dealing with hearings. These were defined as including telephone or video conferencing and the ‘simultaneous, authenticated exchange of electronic communications on the same channel in a manner that enables all Parties authorised to use the channel to receive any communications sent and to send communications.’

“Although intended specifically to deal with domain name disputes the draft Rules could be adopted to deal with on-line electronic commerce disputes generally.

“Perhaps the WIPO Center in Geneva and the ICC’s International Centre for Expertise in Paris are showing the way towards a dispute resolution process which can be used to resolve electronic commerce disputes on an on-line basis without the necessity for physical meetings.”

Both the ICC and WIPO systems are now operating.

The emergence of ODR will be looked at in Chapter 22, after which the DOCDEX and WIPO systems will be considered in Chapters 23 and 24. Chapter 25 considers the possible future development of ODR.