



ADR

ALTERNATIVE

DISPUTE

RESOLUTION

IP Mediation in THAILAND



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South-East Asia IP mediation Conference 11-12 Nov 2024 : Philippines



Government agencies provide mediation services for IP disputes

1



Thailand Arbitration Center
(THAC)
under Ministry of Justice

2



Department of Intellectual
Property (DIP)
under Ministry of Commerce

3



Central IP and Int'l Trade
Court (CIPITC)

4



Royal Thai Police
(in process file a complaint)

ADR Services in DIP

1



Arbitration

Ministerial Rule on **Arbitration**
in IPR

2



Mediation

Most popular

3



Conciliation

(in process : personnel selection to
be roster of DIP Conciliators list)


Ministerial Rule on **Conciliation**
in IPR

The parties should mediate before referred to Arbitration or Conciliation process

Arbitration

Mediation

Conciliation

Neutrals	Arbitrator DIP Panelists approved by Arbitration Board : 47 arbitrator in DIP list or Ad-hoc Arbitrators agreed by parties	Mediator (DIP official)  Experts in relevant issues (Chairman)	Conciliators DIP Panelists approved by Arbitration Board (in process) or Ad-hoc Conciliators agreed by parties
Role of Neutrals	Decision - making process (Decision based on facts, evidence and law)	Facilitative process (To facilitate the discussion while parties take the lead in generating possible solutions)	Advisory process (To provide advice and possible solutions for parties to consider, build on and refine)
Process	Formal (Less formal than Court)	Informal	Informal
Cost	Fees and costs (Less than Court)	No Charge	Fees and costs (Less than Arbitration)
Resolution	Award imposed by arbitrator	Parties decide the outcome by themselves	Parties decide the outcome under conciliator advice
Outcome	Arbitral Award	Settlement Agreement/ Written agreement	Settlement Agreement
Enforcing (Default)	to file a application for enforcement of the arbitral award with IP court	may result in litigation with IP court as a legal binding	may result in litigation with IP court as a legal binding

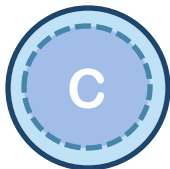
Scope of Disputes in ADR Services

1

Any dispute or controversy relating to all IP rights



trademark



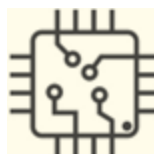
copyright



patent



geographical
indication



Layout Designs of
Integrated Circuits



2

Other dispute or controversy that includes any issues of IP rights



Line / FB profile name

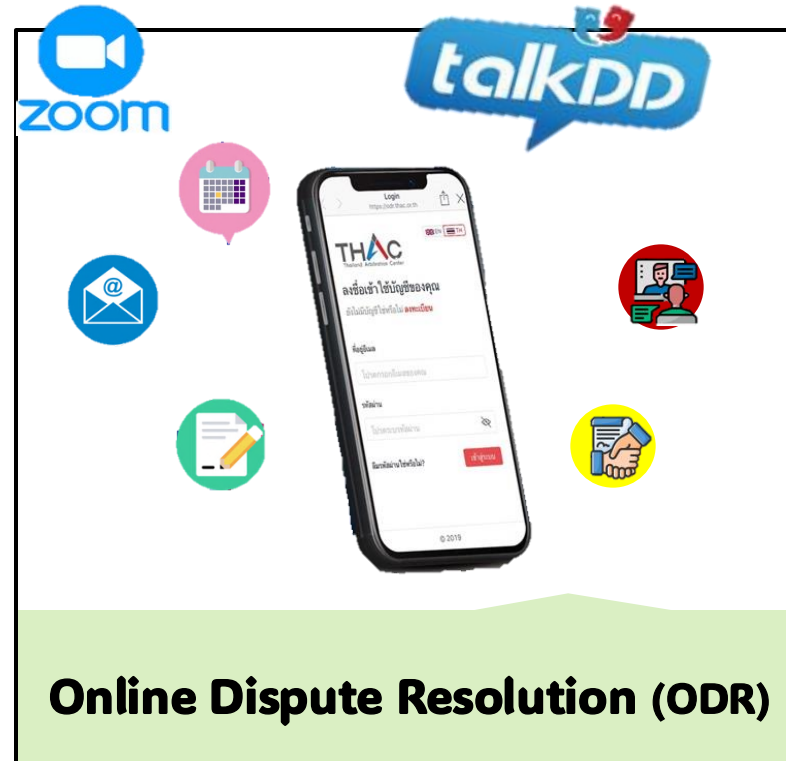


breach of a singer's contract
or a writer contract

Types of Mediation Service



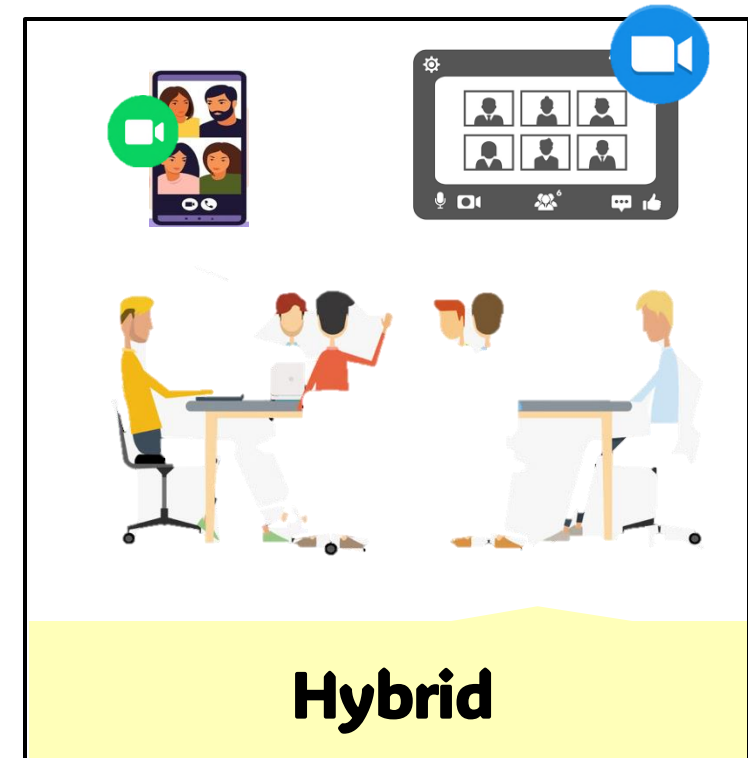
At **DIP**, Legal Affair Office



Via Talk DD under MOU between



and launched in January 2021

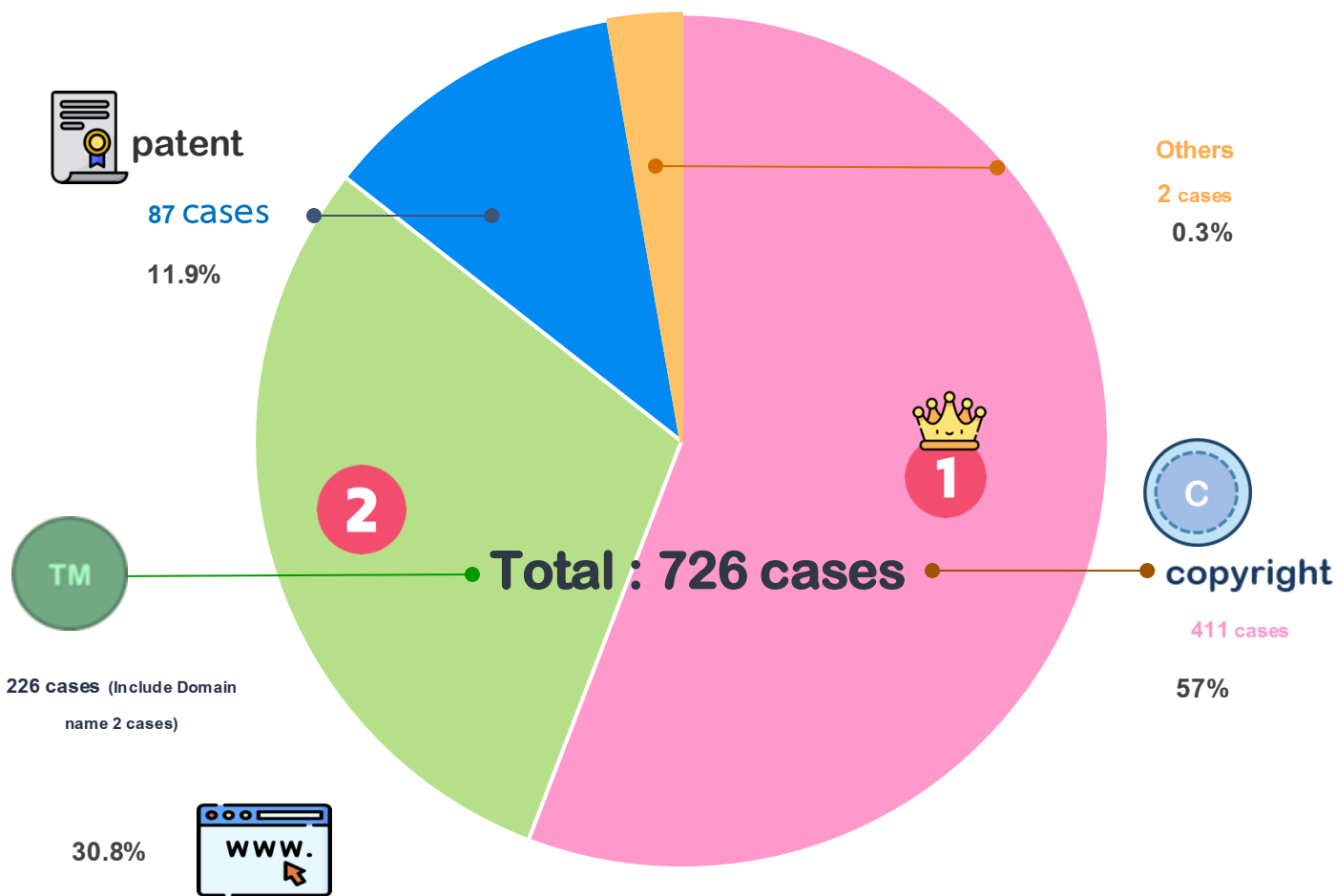


By meeting at DIP and
via Video Conference



Statistics of Mediation in DIP

1 October 2002 – 31 July 2024 (21 Year)

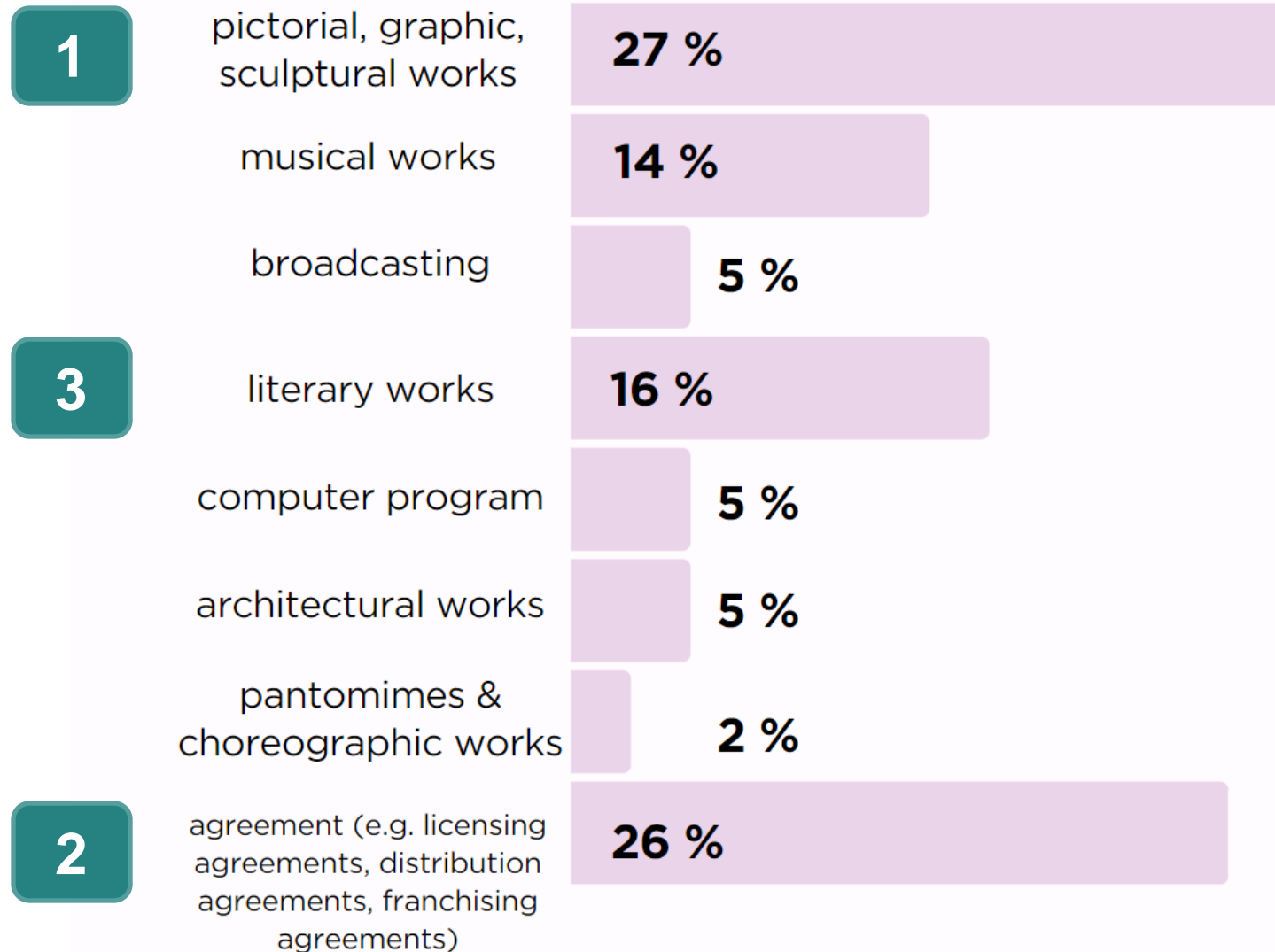


Types of IP	Outcome		In process
	Settlement	Non -Settlement	
Copyright (411)	211 (51%)	199 (48%)	1
Trademark (226)	129	92	5
Patent (87)	34	51	2
Trade secret (2)	-	2	-
Total (726)	374	344	8

Overall case : 726 cases

Types of Copyright Disputes

2021 - 2024 (4 Years)





Sample of the Mediation cases



Case No.1 – Breach of Contract

FACTS:

- The requesting party is a videographer and was hired by the disputant to make an advertising video.
- Both parties agreed to terminate the Contract. The disputant agreed to pay the compensation for 30,000 Baht which paid for 5,000 Baht, due payment (not paid) for 25,000 Baht.

DISPUTE: Failure to pay compensation

REQUEST: The requesting party filed for the mediation process for the due payment (25,000 Baht).

Case No.1 - Breach of Contract

Results:
Successfully made written agreement

The parties **agreed to pay** the compensation for 25,000 Baht and interests for 1,500 Baht (total 26,000 Baht). The payment will be made in 7 monthly installments after the Agreement date.

Case No.2 – The likelihood of confusion (TM)

FACTS:

- The disputant was an authorized agent/dealer of the instant coffee of the requesting party's trademark
- The authorized agent/dealer contract was expired. The disputant had made a coffee product and packaging which is similar to the requesting party's trademark.
- The requesting party claimed that it made a consumer confusion about the trademark.

DISPUTE: The likelihood of confusion between trademarks.

REQUESTS:

1. Stop using the similar trademark on the products.
2. Changing the business name and the juristic person's name to the name that not confusing with the requesting party's trademark.

Case No.2 - The likelihood of confusion (TM)

Results: Success?

- The disputant agreed with the requesting party's request. The parties agreed to made a settlement agreement by themselves.
- After that, the requesting party informed to the DIP that **he satisfied** and request to withdraw the mediation process.

Case 3 COPYRIGHT CASE STUDY in ART WORK (Photo)



The Claimant

Was photographer and
copyright owner of photo

FACTS

The Respondent published Claimant's photo
in his page and FB without permission



CLAIMS

- Compensation for one Photo publication 50,000 Baht

SETTLEMENT AGREEMENT

1. The Respondent agreed to compensate the claimant
for Photo publication 20,000 Baht
2. The Claimant authorized the respondent to use the
photo without any condition
3. The claimant would withdraw the complaint
(compoundable offence)



The Respondent

Was the owner of Website
and FB publishing
the disputing photo



Outcome of Mediation in DIP*

- **Pay damages / compensation / term of pay / condition**

- **Contract Disputes : fulfill their contractual obligations**

- **Stop Infringement e.g. selling / plagiarism / reproducing / distributing**

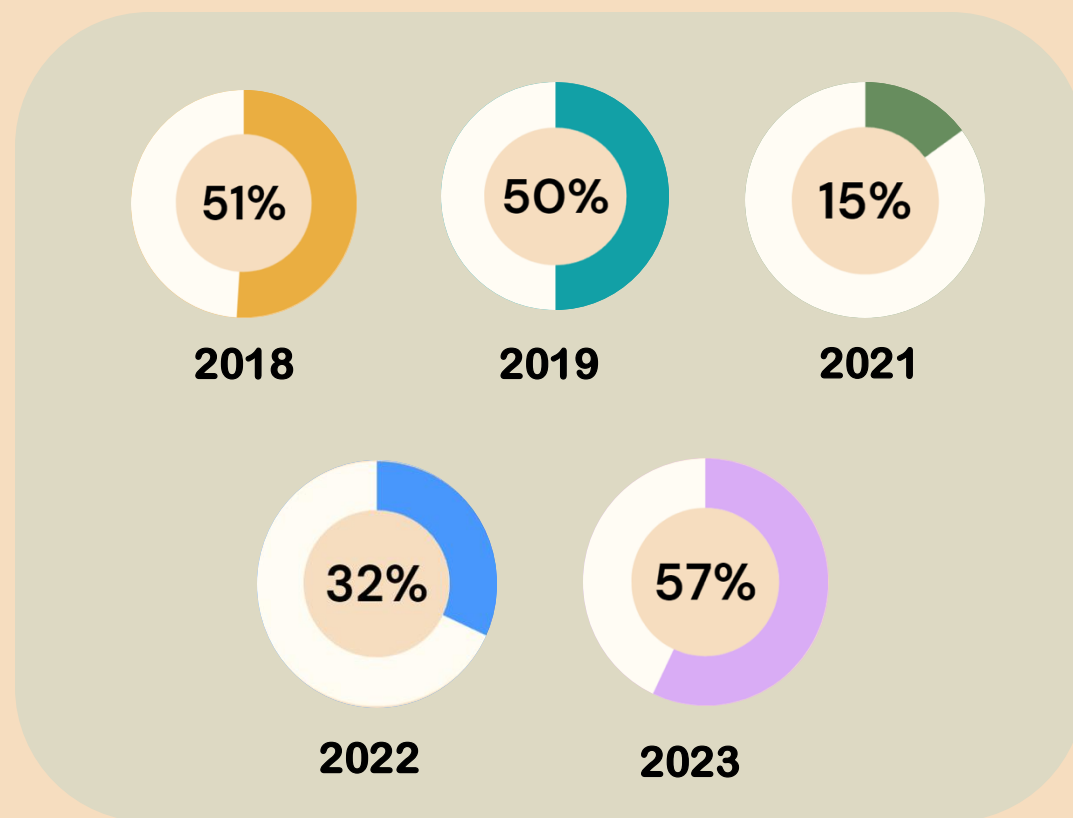
- **Negotiate business : A permanent transfer or Licensing of Copyright with pay fee**

- **legal action : withdraw the complaint of copyright infringement which was compoundable offence**

*vary depending on the specific circumstances of the case and the nature of the dispute

Outcome : Compensation

Claim VS Final agreement



Claimant's Claim

Settle agreement

Amount Overall
(2018 - 2023)

Claim

517k

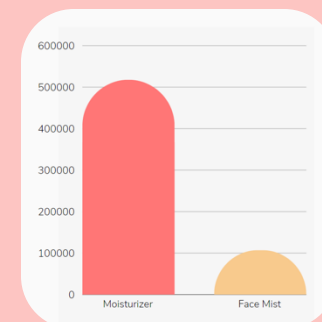
USD

Outcome

107k

USD 20%

80%
410k
USD





Signing a MOU on the Cooperation to Develop ADR Process

7 December 2020



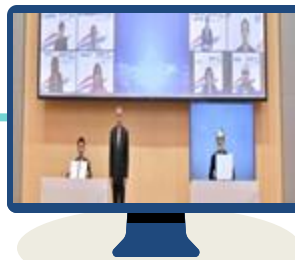
Develop IP Dispute Resolution Process



Areas of collaboration

- Mediation online platform (Talk DD) 
- Knowledge sharing

24 June 2022



1 promotion of ADR service



2 assistance on the best practices and procedures for the online protection of IP .TH and .ไทย (Dot Thai) domain names

Areas of collaboration

- Knowledge sharing
- ADR skill development
- Building mediator/conciliator/arbitrator TH in order to promote them to be appointed under ADR procedures administered by the WIPO Center
- Encouraging the use of case administration services of WIPO center

16 January 2024



collaboration of mediation service



Areas of collaboration

- To promote mediation service of DIP and Pre – Litigation Mediation of The Central Intellectual Property and International Trade Court (CIPITC)
- Knowledge sharing

challenge

- **Determining appropriate compensation**
- **Advise parties to use mediation service during the opposition process in TM / PT (reduce backlog)**
- **Skills in domain name dispute resolution**
- **Role of DIP in mediation process for international infringement**

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