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HONG KONG MEDIATION LECTURE

ENTERTAINMENT DISPUTES AND
MEDIATION: THE KOREAN EXPERIENCE

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Behind the Scenes: The Role of Mediation in Entertainment Dispute Resolution?

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Introduction: Why Entertainment Disputes Need Alternative Dispute Resolution (“ADR”)

Two recent disputes involving Korean television writers and actors illustrate how rapidly changing content markets are testing traditional entertainment contracts. They also show why litigation is not always the best forum for resolving disputes in an industry shaped by reputation, ongoing commercial relationships, creative labour, and evolving technology.

The first dispute concerned the scope of rights granted by a television writer in the drama *The Extraordinary Attorney Woo* (“TV Writers Guild case”). The second concerned actors’ rights in short-form video clips created from existing audiovisual works (“TV Actors Guild case”). Both cases arose from the same underlying market transformation: the decline of traditional television viewership, the rise of OTT platforms, and the rapid expansion of video consumption through smartphones.

These disputes raise a broader question: would the outcomes have been different if they had been resolved through alternative dispute resolution (“ADR”) rather than ordinary litigation? The answer depends not only on legal doctrine, but also on the strategic objectives of the parties. Some litigants seek a precedent that can shape future negotiations. Others seek a practical commercial solution that preserves relationships and establishes workable terms for the future.



Digital Distribution and the Limits of Traditional Contracts

The TV Writers Guild case centred on the interpretation of a writing contract between a young debut writer and a production company for *The Extraordinary Attorney Woo*. The agreement was titled a “broadcast contract” and was drafted on the premise of traditional television broadcasting. However, the clause defining the scope of the licence referred to “broadcasting, etc.”

The Writers Guild argued that this wording should be interpreted narrowly to cover only broadcasting and closely related uses, such as submissions to television drama competitions. On that basis, the Guild argued that the near-simultaneous transmission of the drama through Netflix fell outside the agreed scope and entitled the writer to additional transmission royalties.

The production company responded that OTT transmission had been contemplated from the outset and that the writer had not objected to distribution through Netflix. Because *The Extraordinary Attorney Woo* was the writer’s first television drama, it was difficult to determine whether the original writing fee had already included compensation for transmission rights. Debut writers typically receive lower fees, making the economic assessment more complex. The court of first instance dismissed the Writers Guild’s claim.

The TV Actors Guild case concerned short-form video clips created from audiovisual works. As a general principle, actors’ neighbouring rights in audiovisual works are transferred to the producer. However, where scenes are extracted from one or more works and edited into entirely new clips, actors may be able to assert claims based on reproduction, transmission, and other economic rights.

In 2014, Korean broadcasters MBC and SBS established Smart Media Rep. (SMR), a joint venture to manage online video advertising sales. SMR created new short-form clips by re-editing footage of actors and attaching advertisements. The Actors Guild sought equitable remuneration for this use, but the court dismissed the claim.

Both cases turn on the same structural issue: how rights created for one technological environment should be interpreted in a market transformed by another. Copyright is a bundle of rights divided into moral rights and economic rights. Economic rights include reproduction, distribution, broadcasting, and transmission. Broadcasting and transmission are legally and technologically distinct: broadcasting relies on radio waves, whereas transmission does not. The fact that broadcasting rights and transmission rights entered Korean copyright law nearly 50 years apart reflects that distinction.

Where a copyright contract is ambiguous, Korean law recognises the principle of *in dubio pro auctore*, favouring the author, as affirmed by the Supreme Court of Korea in 1996. Although the Supreme Court has not yet expressly articulated the principle in the same way, the presumption against the drafter is also widely recognised and has developed notably in film-industry disputes before the U.S. Ninth Circuit Court of Appeals.

From an ADR perspective, the two cases show how dispute resolution strategy can diverge even where the legal issues appear similar. The Writers Guild wanted a judicial precedent that could be used in future negotiations with production companies, making mediation less attractive. The Actors Guild, by contrast, hoped that mediation might help establish an appropriate compensation rate for future dealings with broadcasters. Arbitration may have allowed a more industry-sensitive legal evaluation, while mediation could have helped the parties identify a practical commercial solution.



Korea's Entertainment Industry and Intellectual Property Landscape

Korea's entertainment industry now enjoys a strong global reputation, making developments in its entertainment and intellectual property landscape increasingly relevant to an international audience. According to the Intellectual Property Index published by the U.S. Chamber of Commerce, South Korea now ranks among the world's top 10 jurisdictions for overall intellectual property protection. For copyright protection, Korea has previously ranked as high as fourth and has ranked seventh for four consecutive years. Since being removed from the U.S. Trade Representative's Watch List for intellectual property in 2009, South Korea has not returned to either the Watch List or the Priority Watch List.

In 2024, Korean copyright exports reached a record USD 21.61 billion, according to figures announced by the Bank of Korea in March 2025. Korea's copyright trade balance has recorded a surplus for 11 consecutive years, with the 2024 surplus reaching USD 3.36 billion, a 29% increase from 2023. Driven by the copyright sector, Korea's overall intellectual property trade balance also reached a record surplus of USD 1.38 billion.

Over the past five years, content sales revenue has grown at an average annual rate of 5.0%, while content export value has increased at an average annual rate of 6.8%. As of 2023, Korea's content exports by genre were led by games at 62.9%, followed by music at 9.2%, broadcasting at 7.9% and knowledge information at 5.9%.

This discussion is informed by my long involvement in the Korean entertainment sector, including co-founding the Korea Entertainment Law Society in 2006, serving as legal counsel for the Korea Producers Association for 10 years, serving as legal counsel for the TV Writers Guild for 12 years and serving as an outside director of the TV Actors Guild for four years.

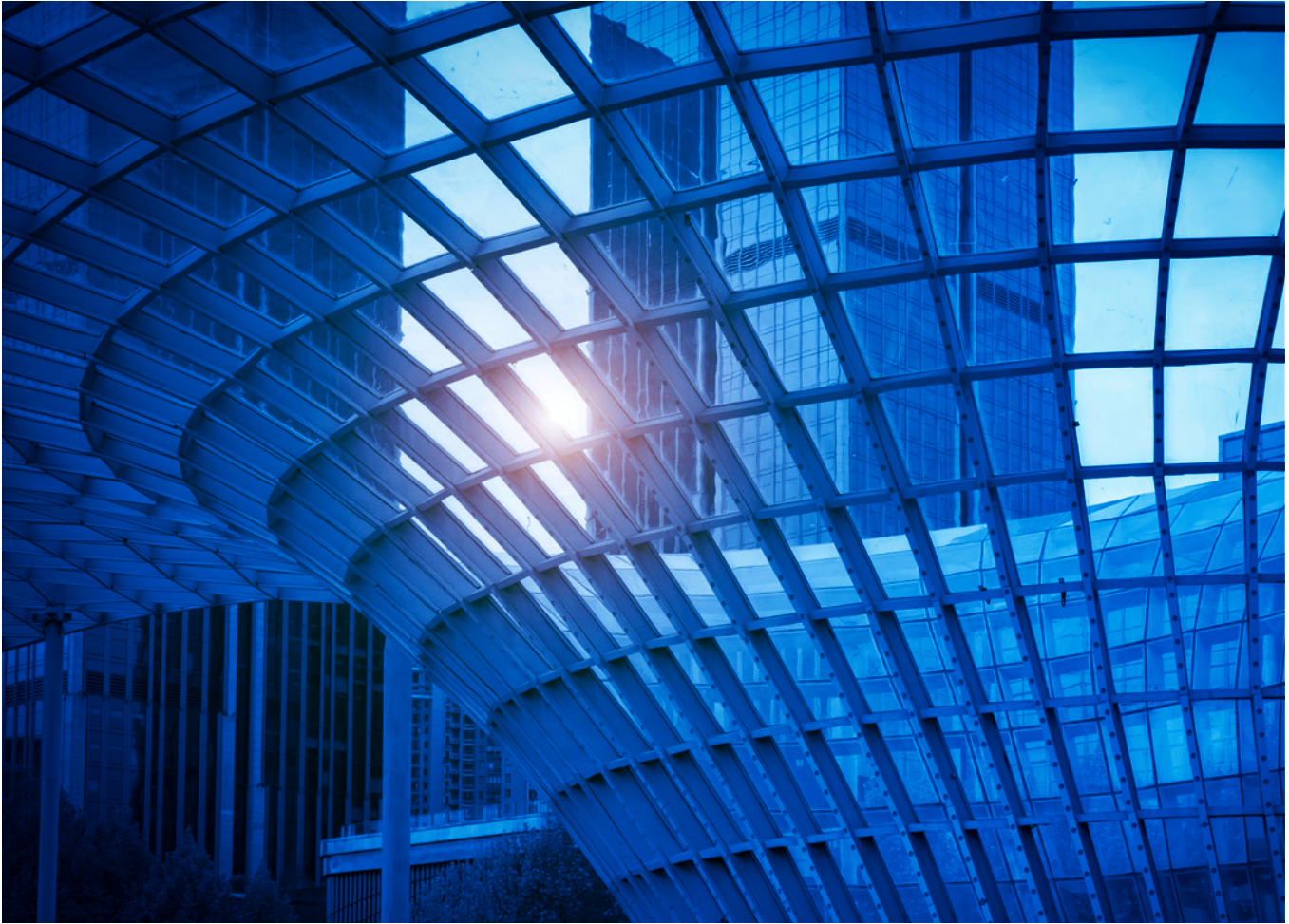
EJAE, "Golden", and the Structure of Korea's Talent System

The popularity of the song "Golden" from *K-Pop Demon Hunters* provides a useful entry point into the structure of Korea's entertainment industry. The song was composed and performed by EJAE, whose family background is closely connected to Korean film and entertainment history. Her grandfather, Shin Young-kyun, was a leading Korean film star who later became a successful businessman, served as a member of the National Assembly, and established the Shin Young-kyun Cultural Foundation. The Foundation supports emerging filmmakers, provides scholarships for children of financially struggling artists and operates a film awards programme.

EJAE spent 12 years as a trainee at SM Entertainment, the agency associated with artists such as BoA and Girls' Generation, but she was never given the opportunity to debut. She later moved to the United States, where her continued efforts eventually led to her present success. Her grandfather had once doubted her prospects as an entertainer and opposed her decision to move abroad, but he later took great pride in her achievements. The family story, now recounted with humour, captures both the personal resilience behind artistic success and the generational pressures often present in entertainment families.

SM Entertainment is well known for its systematic and intensive approach to artist development. Korea's artist training model was influenced by Japan's system, under which agencies identify young talent early, sign trainees to long-term contracts, and invest heavily in training over many years. Because the probability of commercial success is low, these contracts historically tended to be lengthy, and termination in order to move to another agency could trigger substantial penalties.





Agency Contracts and the “Slave Contract” Debate

Approximately two decades ago, MBC’s investigative programme *PD’s Diary* characterised trainee agency contracts in the entertainment industry as akin to “slave contracts”. Courts frequently found such trainee agency contracts to be unfair, void and unenforceable.

In 2009, the Fair Trade Commission introduced a standard agency contract. Under this framework, trainee singers and trainee actors could not remain bound beyond a seven-year structure, although the model reflected differences in training requirements between categories of artists.

The seven-year approach drew on California Labor Code section 2855, which provides that a contract to render personal service may not be enforced against an employee beyond seven years from the commencement of service. The provision reflects a public policy objective of preventing long-term exploitation under oppressive personal service contracts without an opportunity to renegotiate.

Major agencies, including SM Entertainment, initially opposed the wholesale adoption of a U.S.-based legal concept, arguing that California law did not adequately reflect Korea’s trainee system. Nevertheless, agencies ultimately accepted the government’s measures. Although the standard contract is not legally mandatory, market practice gradually shifted in line with regulatory expectations, and standard contracts are now widely used across the entertainment industry.

The standard contract also promotes ADR. In the event of a dispute, it recommends mediation before the Content Dispute Resolution Committee, mediation before the Korea Copyright Commission and, finally, arbitration before the Korea Commercial Arbitration Board.

The Underside of Agency Contract Disputes

The courts' initially lenient approach to entertainers' contract termination claims did not persist indefinitely. As it became apparent that termination requests were not always caused by agency misconduct and were sometimes attributable to the entertainer's own conduct or external influence, judicial rulings gradually regained balance.

Some agency contract disputes involve overreaching parents or competing agencies. One recent arbitration concerning contract termination took an unusually long time, contrary to the ordinary expectation of efficiency in ADR. In that case, an agency employee conspired with the father of a trainee to induce contract termination and establish a separate agency for the same artists. Because the artists had already completed extensive training, the conspirators believed they could avoid significant investment costs. However, no legitimate grounds for termination existed.

At the instigation of the agency employee, several male trainees filed complaints alleging sexual harassment by the agency's female CEO. The criminal proceedings ultimately resulted in a guilty ruling by the Supreme Court, and the arbitration proceedings were suspended for nearly three years while the criminal case remained pending.

Entertainment agencies commonly recruit aspiring performers at a young age and bear substantial living, training and related costs over a long period. These investments involve considerable risk because most trainees do not ultimately achieve commercial success. In the arbitration, the panel had to reconcile the competing positions of the parties while remaining bound by the factual findings of the Supreme Court.

The arbitrators reduced the scope of compensation for sexual harassment to less than one-tenth of the amount typically awarded by courts in comparable cases. They also considered the high sunk costs inherent in the entertainment industry, the overall failure rate among trainees and the CEO's failure to supervise the implicated employee properly. A modest amount of symbolic damages was awarded on the agency's counterclaim. The result was a nuanced outcome that would have been difficult to achieve in ordinary court proceedings, where precedent can operate more rigidly.

Entertainment-related litigation often ends in mediation or conciliation because judgments are public records, preserved long term and capable of being disclosed at any time. Parties may prefer settlement by mutual agreement rather than a judgment that could cause lasting reputational harm. This tendency is especially pronounced in disputes involving celebrities, for whom reputation is central to professional value.

Judicial specialisation also has structural limits. Judges rotate assignments regularly and may not remain in specialised divisions long enough to develop deep expertise in highly technical fields. Although Korea has specialised divisions for intellectual property, labour and media disputes, tenure within those divisions is relatively short. The Patent Court, established in 1998, extended judicial tenure in intellectual property matters, but longer tenure carries risks as well as benefits, including the possibility of doctrinal rigidity if a small group of judges dominates a particular field.

ADR can respond to these limits by allowing panels of legal professionals and industry experts to reach outcomes that are faster, more pragmatic and more closely informed by industry realities.

Court Mediation in Korea

The Seoul Court Mediation Centre was established in April 2009 to introduce a system of full-time mediators and provide administrative support for their work. The Centre handles all civil and family mediation referral cases from the Seoul High Court, as well as mediation application cases and referral cases from the Seoul District Court.

On average, a full-time mediator at the Centre concludes a case in approximately 63 days. This compares favourably with the nationwide average of approximately 14 months, or 420.1 days, required to reach a first-instance judgment in civil cases.

In 2024, the Seoul Court Mediation Centre processed 75,331 cases, comprising 11,356 mediation applications and 63,975 referred mediations. A further 116,915 cases were resolved through mediation conducted directly by trial divisions. Mediation currently accounts for approximately 4.1% of all civil cases handled by district courts. The Seoul Court Mediation Centre has experienced annual case volume growth of approximately 10%, reflecting the courts' increasing emphasis on mediation.

There are no separate statistics showing the number or proportion of entertainment-related disputes handled through court mediation centres.

Entertainment Arbitration and the Korea Commercial Arbitration Board

The Korea Commercial Arbitration Board ("KCAB") has made sustained efforts to attract entertainment-related disputes. A mid-level KCAB manager regularly attended monthly meetings of the Korea Entertainment Law Society to build relationships with practitioners in the field. KCAB personnel also promoted arbitration clauses by using business cards printed with arbitration clauses on the reverse side. Those efforts proved effective, and KCAB now handles approximately 30 significant entertainment disputes each year.

One notable case involved a dispute between a foreign production company and a Korean talent agency after the production company alleged that the Korean lead actress had disappeared midway through filming. The actress had returned to Seoul, citing medical treatment for a minor illness, and did not return to the filming location.

Her absence caused severe disruption. To complete scheduled scenes, the director used a female crew member in the actress's costume and filmed only from behind. Those scenes were then edited together with footage shot before the actress's departure, after which the production company sought compensation from the Korean agency.

By the end of the second arbitral hearing, it was determined that all witness examinations would take place at the third hearing and that the proceedings would be concluded at that stage. All representatives of the Korean agency attended that crucial hearing, including an individual later identified as the actual owner of the agency.

The case demonstrates how ADR can benefit from arbitrators and mediators with subject-matter expertise. Unlike judges, who must remain detached from industry-specific knowledge, arbitrators and mediators can draw on professional experience within a particular field. That expertise allows for more practical and context-sensitive decision-making than may be possible in ordinary litigation.

At the decisive hearing, the lead actress testified that the agency's owner had instructed her to return to Seoul and had prohibited her from resuming filming. She explained that the agency wanted her to participate in promotional activities for a film she had recently completed in Seoul.

This testimony revealed the agency's misconduct. By the time examinations of four witnesses were completed, it was approximately 2:00 a.m. While the arbitration award was being drafted, the case was withdrawn, apparently because the agency recognised the strength of the production company's position. The case illustrates the distinctive strengths of arbitration in entertainment disputes: flexibility, efficiency and expert understanding of industry realities.

Administrative Mediation under the Ministry of Culture

Korea has more than 60 administrative mediation bodies established by statute, and the number continues to increase. Administrative mediation bodies under the Ministry of Culture include the Korea Copyright Commission and the Content Dispute Resolution Committee, both of which operate on statutory authority. The Korean Film Council and the Artists' Welfare Foundation (the "Foundation") also operate mediation bodies on a voluntary, non-statutory basis.

The Korea Copyright Commission originated as the Copyright Deliberation and Mediation Committee in 1987, when Korea joined the Universal Copyright Convention. It was established to mediate copyright disputes and later also functioned as a policy think tank, contributing to the Foundation and development of Korea's entertainment industry. The Commission currently handles approximately 150 disputes each year, with a settlement rate of around 50%. Its mediation system consists of single-member panels conducted by lawyers and three-member panels that must include at least one lawyer.

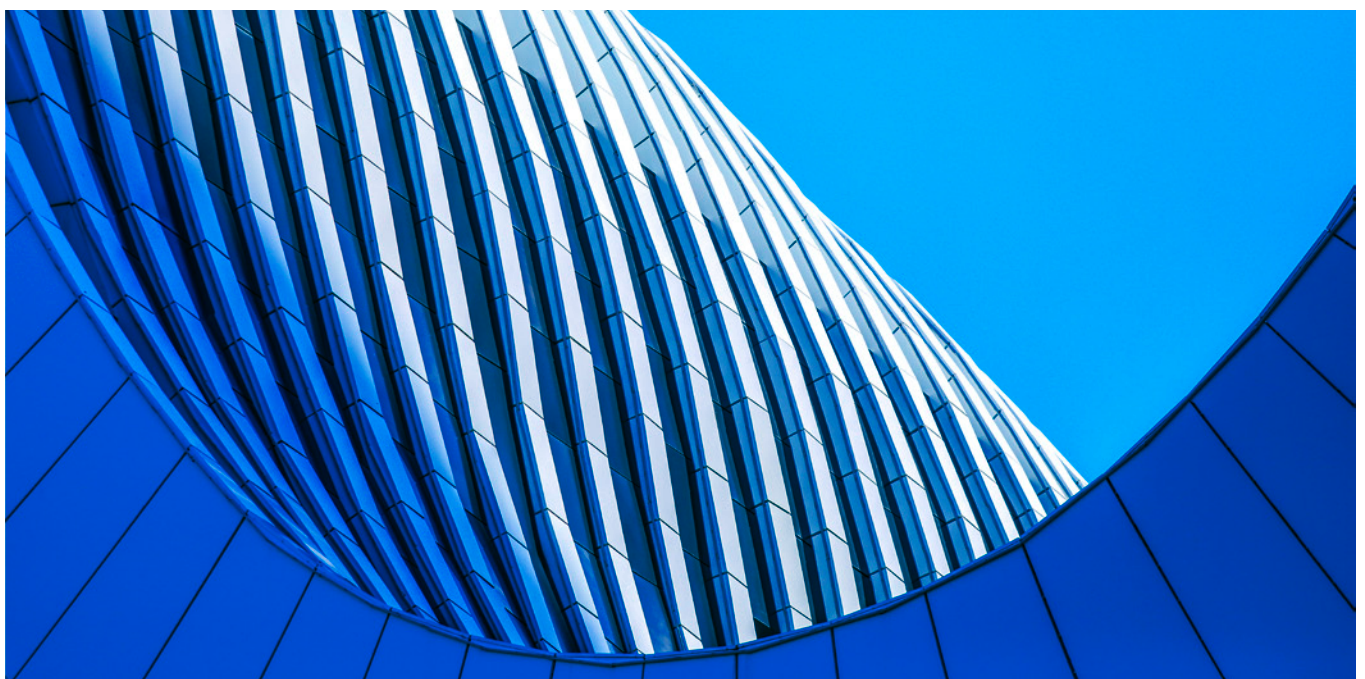
In 2020, an *ex officio* mediation system was introduced. Under that system, if the parties fail to narrow their positions, the mediator may issue a proposal after considering both sides' arguments, and the proposal is deemed accepted if neither party objects within two weeks. Some scholars have criticised this mechanism, arguing that it should be valid only where both parties provide explicit consent.

The Foundation emerged after a female freelance screenwriter was found dead in February 2011, with malnutrition reported as the cause of death - an incident that deeply shocked Korean society. The National Assembly responded by rapidly enacting the Artists' Welfare Act and establishing the Foundation.

The Ministry of Culture later introduced a mediation function as part of the Foundation's mandate, although that decision faced opposition. The Foundation primarily assists artists in the performing arts sector, where disputes often involve unpaid compensation claims by actors or crew members. In many such cases, producers are unable to pay because productions have incurred losses due to low audience attendance, rather than because revenues have been deliberately concealed.

The Foundation once announced that legal aid had been provided in 80 cases, but favourable judgments were reportedly not successfully enforced. The legal aid programme therefore proved ineffective in practice and was eventually discontinued.

By contrast, the Korean Film Council's mediation system has been more effective in disputes over unpaid wages for film crew members. Commercial film producers are corporate entities that must preserve their reputations to remain viable in the industry, so public disclosure of wage arrears on the Film Council's website generally prompted payment. The performing arts sector differs because producers are often small-scale businesses or sole proprietors, many of whom rely heavily on government subsidies and lack the capital structure of commercial film production.



The Content Dispute Resolution Committee

The Content Dispute Resolution Committee was established in 2011. Because “content” overlaps substantially with copyrighted works, many such disputes could previously have been handled by the Korea Copyright Commission. Institutional priorities within the Ministry of Culture, however, contributed to the creation of a separate mediation body under the Content Bureau.

The Committee handles approximately 15,000 disputes annually, making it the second-largest administrative mediation body among more than 60 such agencies in Korea. In 2023, it received 15,177 cases, of which 13,335 involved gaming-related disputes. These gaming disputes included refund claims for mobile game purchases by minors, payment disputes concerning subscription withdrawals or contract terminations, service disruption disputes involving server failures or in-game errors, and account suspension disputes following the alleged use of illegal programmes or unauthorised cash transactions involving in-game items.

In most cases, consumers first file complaints directly against game companies or platform operators, and mediation is requested through the Committee only if no agreement is reached. The Committee then confirms the positions of both parties and facilitates resolution, resulting in relatively high levels of consumer satisfaction.

Most of these disputes are handled administratively by secretariat staff and in-house lawyers rather than through formal mediation sessions conducted by appointed mediators. Only about 100 cases per year proceed to formal mediation sessions involving mediators, some of which are referred from court mediation centres. In recent years, disputes between television drama writers and production companies have also increased.

The Press Arbitration Commission

One of Korea’s most active mediation bodies is the Press Arbitration Commission. Although its name includes the word “arbitration”, its primary function is mediation, and it has handled no arbitration cases since 2019. The Commission processes approximately 4,000 cases each year.

Entertainers and other public figures frequently use the Commission to pursue claims involving defamation, corrections and rights of rebuttal arising from media reports. These mechanisms provide a relatively swift and structured way to address reputational harm.

From its inception, the Press Arbitration Commission has relied heavily on judges. Its chairpersons have traditionally been former judges, and the heads of its panels are appointed from among sitting judges. In a society that has historically placed significant trust in public institutions and authority figures, judicial involvement has contributed substantially to the Commission’s credibility and effectiveness.

The Future of Entertainment Mediation in Korea

Korea signed the Singapore Convention on Mediation in August 2019, signalling an intention to align with international standards for enforcing mediated settlement agreements. In September 2025, the Ministry of Justice prepared draft legislation to implement the Convention domestically and began collecting public opinions. The legislation is expected to be promulgated in 2026, followed by Korea’s formal ratification of the Convention.

Entertainment disputes are particularly well suited to ADR mechanisms. Among ADR methods, mediation offers advantages over arbitration in terms of speed and cost efficiency, but mediation has not yet reached its full potential in Korean society. Some commentators have argued that the proliferation of mediation bodies has created fragmentation and that greater consolidation and coordination are needed.

Beginning in 2026, the Content Dispute Resolution Committee plans to expand its pool of mediators from 30 to 50, introduce *ex officio* mediation and implement collective mediation mechanisms similar to class-wide mediation. Together with the ratification of the Singapore Convention on Mediation and the expanded role of the Content Dispute Resolution Committee, these changes are expected to bring meaningful developments to entertainment dispute mediation in Korea.

The Korean experience shows that entertainment disputes require more than formal legal analysis. They require sensitivity to reputation, market practice, industry economics, creative labour and long-term relationships. For that reason, ADR, especially mediation conducted by professionals with genuine industry understanding, offers a practical and humane path for resolving disputes in a sector where legal rights, artistic ambition, and commercial risk are inseparably linked.



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