

## How to manage a dispute in the photography industry<sup>1,2</sup>

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### ABSTRACT

The photography industry is expanding rapidly with the development of fashion. However, the process of photography occurs more and more conflicts nowadays. The disputes occur in preparation before the shooting, a process during the shooting and the pictures after the shooting. The problem of insufficient negotiation and different criteria are two main issues causing the dispute. When the dispute occurs, the photography process is heavily affected and delayed. We use ADR to solve the dispute. By referring to different documents, we choose four feasible alternatives. Combing with certain criteria, we select the best alternative, which is a negotiation in every process by using the Compensatory model of Additive Weighting Technique. We believe it would be the most efficient way to solve the dispute.

**Key Words:** The Fashion industry, photography industry, commercial shooting, contract, Alternate Dispute Resolution (ADR).

### INTRODUCTION

According to the 124-page industry assessment from Pulse of the Fashion Industry 2018 report released, “75% of fashion companies have improved their environmental and social performance over the last year, and the business case has proven to be nothing but positive. With the boom of the fashion industry, photography industry grows very fast as photography is an important part of fashion.”<sup>3</sup>

In a snapshot from IBISworld report, “growing per capita disposable income and rising advertising expenditure have driven growth for the Photography industry over the five years to

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<sup>3</sup>Pulse of the Fashion Industry 2018 report released (2018 May 9) Retrieved from <https://www.globalfashionagenda.com/pulse-of-the-fashion-industry-2018-report-released/#>

2018, as both commercial photographers and portrait photographers have benefited from increased demand for their services. Industry revenue is expected to grow an annualized 1.9% to reach \$10.6 billion during the five-year period, which includes a 1.9% increase in 2018 alone. The photography industry is primarily composed of nonemployer industry operators. In 2018, IBISWorld estimates that 89.4% of total enterprises are nonemployers.”<sup>4</sup>

Because of the fast growth of fashion and the need for photography, more and more conflicts occurred. For example, preparation before the shooting, a process during the shooting and the pictures after the shooting. Photography is a project. And it involves planning, controlling, risks management and checking. All of the processes in the projects related to the contract.

“Since commercial photography of fashion involves multiple interests, in the effective implementation of the contracting of the two parties, we must also do a good job of communicating the portrait rights of all models appearing in the photos. To avoid disputes, it is necessary to sign the various contracts. The drafting of the rules is to be communicated at the preparation stage.”<sup>5</sup>

Brands sign the contracts with photographers or photography studio for decreasing or avoiding conflicts. However, even with the contract, there still are many disputes occurring in the whole photography program.

Why still has disputes with Photography Contracts?

The photography relates to project, program, asset, and portfolio:

Objects		Definition	Photography
Project	Project	“An investment that requires a set of logically linked and coordinated activities performed over a finite period of time in order to accomplish a unique result in support of the desired outcome.” <sup>6</sup>	Each individual photography project is a project.

<sup>4</sup> Photography Industry in the US (2018 June) Retrieved from <https://www.ibisworld.com/industry-trends/market-research-reports/professional-scientific-technical-services/professional-scientific-technical-services/photography.html>

<sup>5</sup> Why need a shooting agreement Retrieved from <https://lessaccounting.com/blog/free-photography-contracts/>

<sup>6</sup> GUILD OF PROJECT CONTROLS COMPENDIUM and REFERENCE (CaR) | Project Controls - planning, scheduling, cost management and forensic analysis (Planning Planet). (n.d.). Retrieved from <http://www.planningplanet.com/guild/gpccar/formal-disputes-resolution>

Program	Program	“A group of related projects managed in a coordinated way to obtain benefits and control not available from managing them individually.” <sup>7</sup>	Sometimes a big photography program composed of several projects.
	Strategic program	Deliver assets and benefits that are directly linked to attaining the sponsoring organization’s future state	.Hire a top model or famous photographer for the shooting.
	Operational program	Deliver assets and benefits that are critical to the sponsoring organization’s day to day operations	Maintenance of the photo lab and equipment.
	Multi-Project program	Achieve synergies from projects with common traits such as shared resources, similar clients or product technology	Several brands shooting for one company.
	Mega-Project program	Deliver a specific asset to the sponsoring organization.	A shooting contains many top models at exotic locations.
Assets	Human Assets	Controlled by HR	Some members work together.
	Physical Assets	Controlled by either operation (“plan manager”) or other functional entities such as “heavy equipment shop”.	There is a lot of photography equipment for a shooting.
	Financial Assets	Controlled by accounting or finance	Finance department charges the cost.
	Intangible Assets	Difference between the company’s book value and market capitalization value.	The photography team has own value and reputation.
Portfolio	Portfolio	The factor of minimizing the risk and maximizing the return. Any organization, be it owner or contractor has a portfolio of assets available to dedicate to project, with the objective being to develop the best “mix” of projects which will generate the most favorable return on those “assets”.	Plan or obtain the asset as much as possible before the project and allocate the asset sufficiently. Besides, have a plan B when the asset is not available.

Table 1. The definitions of project, program, portfolio, and assets.<sup>8</sup>

“The purpose of a contract is to clearly set the rules of engagement, what is acceptable by both parties, and how to resolve possible conflicts. A clearly written contract will eliminate most

<sup>7</sup>Definition of program Retrieved from <https://quizlet.com/155111884/project-management-exam-1-flash-cards/>

<sup>8</sup> By Author

future/possible miscommunications between you, the photographer, and the client.”<sup>9</sup> Even two parties have the shooting agreement. But why there are many conflicts between them?

From the official contract, we can conclude that “General shooting agreement involves the seven contents: 1. The scope of Work, 2. Fees, 3. Work Product, 4. Indemnification, 5. Duty of Client, 6. Exclusive Photographer, 7. Model Release.<sup>10</sup> So I divide the whole project into three stages: 1. Communication before the shooting, 2. Processing during the shooting, 3. Checking after the shooting and paying.

Alternative Dispute Resolution (ADR) " is the procedure for settling disputes without litigation, such as arbitration, mediation or negotiation "<sup>11</sup>

For the commercial shooting, as the fashion industry is achieved worldwide and no specific regulation for the disputes, there are multiple jurisdictions possible when problems occur, and many people keep a different opinion. So ADR would be very helpful in the shooting contract conflict. Furthermore, as a lot of people involved the whole process and program, ADR is presented as a great tool to fix litigations. Indeed, it allows to solve geographical issues and to reduce the cost of classic conflicts resolution. On top of this, it often enables a speedier resolution.

For my research, I will use many real cases available, such as news, articles, videos, and events as often as possible to ensure the well-being of the project through my narrow focus.

As what I can see in my researches, there are more and more shooting contracts with fashion development, in my paper, I will focus on the scope of Commercial shooting. With Commercial shooting, I can be sure that there will be disputes following up. Since the definition and regulation of details are different in different parties, the importance to have a standard definition on cross-border contracts is high. Due to the different background and opinion, both parties would have different requirements, understanding, judging criteria and so on. With increasing the criteria of shooting and satisfaction between both parties, the need for disputes increases too. That’s why we need alternate dispute resolution to solve

Through my research, I will answer How to solve/improve/ensure the weak points of commercial shooting contract of the fashion industry?

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<sup>9</sup> Why need a shooting agreement Retrieved from <https://lessaccounting.com/blog/free-photography-contracts/>

<sup>10</sup> The process of shooting Retrieved from <https://improvephotography.com/wp-content/uploads/2015/10/IP-ShortFormGeneralPhotographyContract.pdf>

<sup>11</sup> What is Alternative Dispute Resolution? - FindLaw. (n.d.). Retrieved from <https://hirealawyer.findlaw.com/choosing-the-right-lawyer/alternative-dispute-resolution.htm>

As said before I will mainly focus on the commercial shooting contract disputes and how to solve its trouble when both contractors are in different position and opinion.

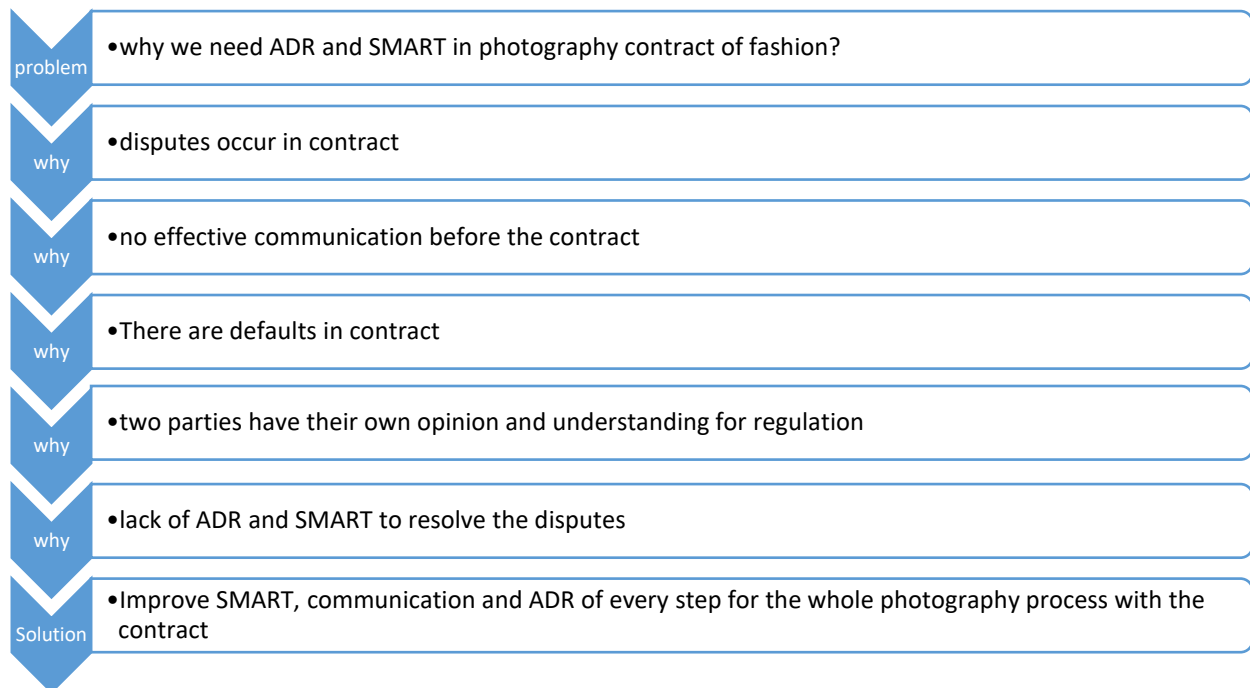


Figure 1. Five Why Method Root Cause Analysis<sup>12</sup>

“To secure your shooting opportunity, I strongly recommend that you take out a lease or shooting agreement with your landlord.”<sup>13</sup> Besides, making sure the communication before the shooting is valid and you have the same criteria for checking the final production.

With a written agreement, each party knows exactly what is expected and will help to avoid any misunderstandings.

For us contract is an essential part of the 21st century, thanks to this we can interact with people from all over the world, which allow us to create trade we would never think about before, it also helps little companies to survive even when the local market collapse.

<sup>12</sup> By Author

<sup>13</sup> Have a shooting lease or shooting agreement Retrieved from <https://basc.org.uk/game-and-gamekeeping/shooting-leases-and-shooting-agreements/>

That's why it is crucial for us to understand why and how to use ADR and SMART for contract and project disputes, may it be from the scammers, or not familiar commercial photography users whose mistakes might create trouble.

## METHODOLOGY

### 1. Problem definition

The primary objective of this paper is to understand why conflicts and disputes occur in the project of shooting even two parties signed the contract before the initiation of the project and helped the people who will involve into a photography project improve the management skill and avoid or reduce the disputes. To reach this purpose, the paper is going to answer the following questions:

- How do we improve ADR system regarding the photography project?
- What photography groups or companies need to strengthen so that can effectively manage the project?

### 2. Feasible Alternatives and attributes

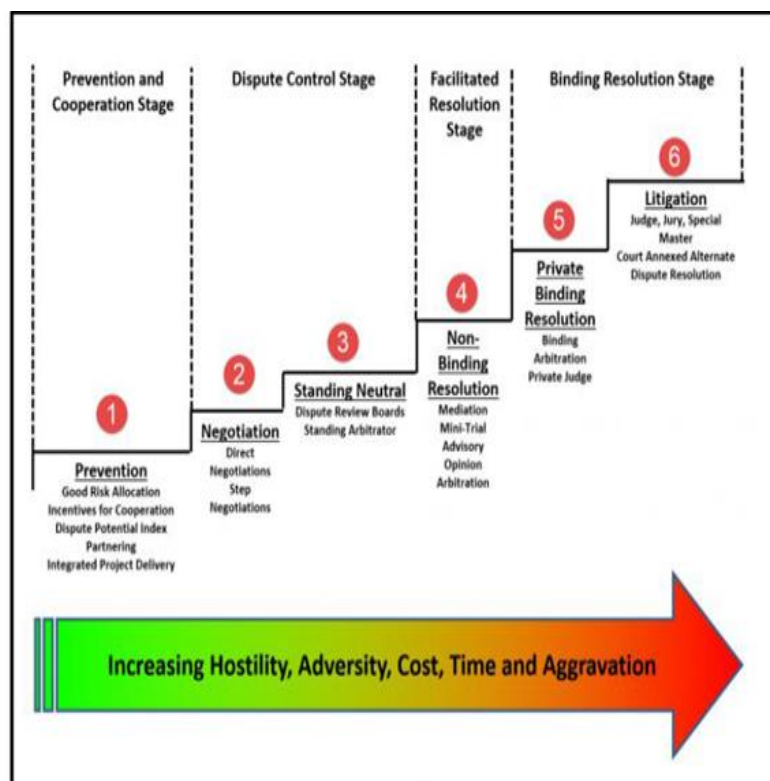


Figure 2. Illustrating the Escalation Steps in the ADR Process<sup>14</sup>

<sup>14</sup> Escalation Steps in the ADR Process Retrieved from <http://www.planningplanet.com/guild/gpcar/introduction-to-managing-project-controls>

According to the Guild of Project Controls Compendium & Reference (GPCCaR), the prevention is important, as it is the lowest cost, less time-consuming.

From this chart, we can see how important "Prevention" is. If photography contract and ADR are mature, all these complicated steps "negotiation, dispute review boarding, mediation, arbitration, judge" can be avoided.

Therefore, in the next stage, we are going to discuss further the improvement of ADR and photography contract.

With the increase of fashion photography, it is getting easier to do fashion business with brands or business partners, request and payment, we finish the deal, however, how about the issues which occur with the contract? In my research, I will see the main problems of contracts in a photography project or portfolio, and I will try to analyze them then give the solutions. I will use Multi-Attribute Decision Making, which is also called MADM, in my research to figure out the solutions to problems followed by photography project.

As ADR (alternative dispute resolution) is currently more and more used to settle cases and free up court trial dockets. And SMART is more and more used provide a more comprehensive definition of goal setting. In feasible alternatives solutions part, we propose:

- negotiation
- mediation
- collaborative law
- arbitration

### **3. Development of the Feasible Alternatives**

After discussing the possible alternatives of online conflict resolution, we will try to rank them from best to worst, taking into account quantitative and qualitative criteria.

1) In negotiation: We always try to negotiate first when the dispute occurs in a project, which could find the solution as soon as possible and we don't want to waste any resources. The negotiation involves in the communication of preparation, the disputes of photography contract, disputes occur during and after shooting.

2) In mediation: We hope someone could help to find a solution if there is no criteria for the disputes occur in the photography project. Especially, the two parties may have different criteria for one regulation.

3) In collaborative: With the help of collaborative, we wish to find the formal resolution when the project relates the big brand or heavy cost.

4) In arbitration: “Arbitrations often occur because parties to contracts agree that any future dispute concerning the agreement will be resolved by arbitration.”<sup>15</sup>

#### **4. Selection of criteria**

In order to analyze the four options that we have detailed before as to which is the most appropriate way to resolve commercial contract disputes, we will use MADM technology and the SMART GOALS to eliminate any bad alternatives.

Attributes are the standard by which we make judgments:

##### **1) Flexibility**

We take into consideration whether there is a flexible solution mechanism to make the problem simple when the situation becomes complicated, to solve it quickly.

##### **2) Feasibility**

We question the feasibility of the program, and the solutions required for different disputes are different. When we are using the solution, we hope that the method is suitable and can solve the problem.

##### **3) Time-saving**

We need time. In the process of a project, time management is an important aspect, and we need to consider the impact of the length of time reflected on the project and then make efforts on the project.

##### **4) Simplicity**

Simplicity means fewer steps in the procedure and less challenging. When we simplify things, we will clearly discover the clues of development and stay focus on the goals and reduce unnecessary tasks.

##### **5) Rational Results**

When we want to have a reasonable result, we will think about how we can act to achieve our expectations, so that we can save time and work in intermediate steps and have a positive influence.

##### **6) Specific**

“The goal before planning should be well defined and clear to anyone that has a basic knowledge of the project.

##### **7) Measurable**

Know if the goal is obtainable and how far away completion is and find out when you have achieved your goal.

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<sup>15</sup>Arbitration Retrieved from [https://en.wikipedia.org/wiki/Alternative\\_dispute\\_resolution](https://en.wikipedia.org/wiki/Alternative_dispute_resolution)



**8) Agreed Upon**

Agreement with all the stakeholders what the goals should be.

**9) Realistic**

Within the availability of resources, knowledge and time

**10) Trackable**

For whatever goal or objective you have, the first thing you should think about is how to track it.”<sup>16</sup>

Attributes	Negotiation	Mediation	Collaborative	Arbitration
Flexibility	3	3	2	1
Feasibility	3	2	2	2
Time	2	2	2	1
Simplicity	2	2	2	1
Results	2	2	2	2
Specific	3	2	3	3
Measurable	2	2	3	3
Agreed upon	3	3	3	3
Realistic	3	2	2	2
Trackable	3	2	2	1

Table 2.<sup>17</sup>

<sup>16</sup> SMART GOALS Retrieved from <https://www.projectsmart.co.uk/smart-goals.php>

<sup>17</sup> By author

Attributes:

0 = Highly unlikely to satisfy goals and objectives

1 = Unlikely to satisfy goals and objectives

2 = Likely to satisfy goals and objectives

3 = Highly likely to satisfy goals and objectives

Attributes	Negotiation	Mediation	Collaborative	Arbitration
Flexibility	1.00	1.00	0.67	0.33
Feasibility	1.00	0.67	0.67	0.67
Time	0.67	0.67	0.67	0.33
Simplicity	0.67	0.67	0.67	0.33
Results	0.67	0.67	0.67	0.67
Specific	1.00	0.67	1.00	1.00
Measurable	0.67	0.67	1.00	1.00
Agreed upon	1.00	1.00	1.00	1.00
Realistic	1.00	0.67	0.67	0.67
Trackable	1.00	0.67	0.67	0.33
<b>Total</b>	<b>8.68</b>	<b>7.36</b>	<b>7.69</b>	<b>6.33</b>

Table 3. MADM Compensatory model<sup>18</sup>

<sup>18</sup> By Author

## FINDINGS

### 1. Analysis and comparison of the alternatives

Then we set undesirable scenario=0, (attribute value-worst case)/(best case-worst case), to calculate the score in each cell,

For example, solution (A), the flexibility is 3, Highly likely to satisfy goals and objectives. Therefore, we get the formula: (3-0)/(3-0)=1.00

Attributes	Relative Rank	Weight (Z)	Negotiation (A)	(Z)*(A)	Mediation (B)	(Z)*(B)	Collaborative (C)	(Z)*(C)	Arbitration (D)	(Z)*(D)
Flexibility	4	0.13	1.00	0.13	1.00	0.13	0.67	0.09	0.33	0.43
Feasibility	5	0.55	1.00	0.55	0.67	0.37	0.67	0.37	0.67	0.37
Time	9	0.04	0.67	0.27	0.67	0.27	0.67	0.27	0.33	0.10
Simplicity	10	0.02	0.67	0.01	0.67	0.01	0.67	0.01	0.33	0.02
Results	7	0.07	0.67	0.05	0.67	0.05	0.67	0.05	0.67	0.05
Specific	2	0.16	1.00	0.16	0.67	0.1	1.00	0.16	1.00	0.16
Measurable	3	0.15	0.67	0.1	0.67	0.1	1.00	0.15	1.00	0.15
Agreed upon	1	0.18	1.00	0.18	1.00	0.18	1.00	0.18	1.00	0.18
Realistic	6	0.09	1.00	0.09	0.67	0.06	0.67	0.06	0.67	0.06
Trackable	8	0.05	1.00	0.05	0.67	0.03	0.67	0.03	0.33	0.03
Sum	55	1	8.68	1.59	7.36	1.3	7.69	1.37	6.33	1.37

Table 4. MADM Compensatory model<sup>19</sup>

<sup>19</sup> By author

As can be seen from table 4, Negotiation has higher scores of attracting talents than Collaborative in Flexibility, Feasibility, Realistic, and Trackable. Negotiation performs much well in Job Prospects; however, Negotiation has a lower score on Measurable.

**2. Selection of the preferred alternative**

Based on the literature review, disjunctive method and the additive weighting analyses, it is clear that France has more competencies to attract international project team member than China with better perform in five out of six criteria, only fell back in Job Prospects due to the significant influence of the rising economic power of China.

**3. Performance monitoring and optimization**

To track the feasibility and performance of the solution we recommended, we will use the Pareto Analysis to keep monitoring the factors that have a critical impact on ADR and should be optimized. We will take some factors which cause the performance of the solution decline into consideration and evaluation, such as the frequency of occurrences of over Negotiation, Mediation, Collaborative, and Arbitration. Monitoring the performance of the ADR by using this method, we can find out which element (causes) should be addressed first from the Pareto Analysis Chart.

Before using Pareto Analysis method, we need to:

- 1) Collect data and related data for different analysis factors.
- 2) Form a statistical summary of the frequency of occurrences of these factors(causes) as a percentage.
- 3) Prepare the Pareto Analysis table, where the rows in decreasing order of importance of the elements (i.e., the most important element first).

	Negotiation	Mediation	Collaborative	Arbitration
Frequency	a	b	c	d
Percentage of occurrences	v%	w%	x%	y%

Table 5. Pareto Analysis table<sup>20</sup>

Then we need to draw the Before-and-After Analysis Using Comparative Pareto Chart:

4) Plot the information in the Pareto Analysis Chart.

- Plot a curve with elements on x- and cumulative percentage of occurrences on the y-axis.

<sup>20</sup> By Author

- Plot a bar graph with elements on x- and percent frequency on the y-axis.

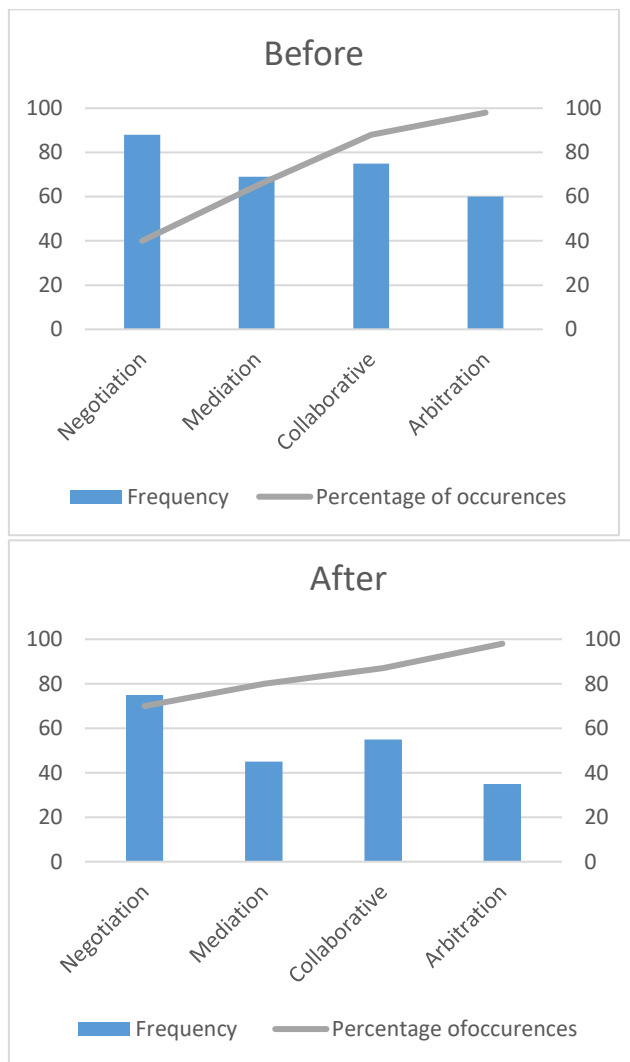


Chart 1. Before-and-After Analysis Using Comparative Pareto Chart<sup>21</sup>

As the chart shows, we can say Negotiation is definitely the best way to deal with the dispute in the Photography Project and can solve almost 35% of the dispute.

## CONCLUSIONS

In this paper, we mainly take some research into the dispute resolution in Photography industry, regarding the rapid development of the fashion industry. We answer two principal questions: How do we improve ADR system regarding the photography project? And what photography groups or companies need to strengthen so that can effectively manage the project?

<sup>21</sup> By Author

We figure out four main ways of dispute resolution, they are:

- 1) Negotiation
- 2) Mediation
- 3) Collaborative
- 4) Arbitration

Then we introduce difference attributes of flexibility, feasibility, time, simplicity, results, specific, measurable, agreed upon, realistic and trackable. We use the additive weighing method to measure different alternatives. Then we found the most efficient method for dispute resolution is a negotiation. And we also have the second, third and last choice if negotiation does not work.

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