

GUIDELINES ON THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE IN MEDIATION

These guidelines were prepared by the Mediation Committee of the International Bar Association, reflecting our commitment to exploring the role of generative artificial intelligence (**AI**) in mediation practice. The growing use of AI presents an unprecedented opportunity to facilitate mediation by improving efficiency, reducing costs, and broadening access to justice, provided that AI is integrated into mediations with appropriate safeguards.

Part One of these guidelines provides a non-exhaustive list of suggestions for how AI can enhance mediations including uses for mediators, parties, and party representatives (jointly referred to as **Mediation Participants**) and mediation institutions (Mediation Participants and mediation institutions are jointly referred to as **Users of AI**). These suggestions are subject to the safeguards in Part Two.

Part Two of these guidelines identifies risks that may result from the use of generative AI and makes proposals for managing those risks.

Part Three provides a sample statement that Mediation Participants can use to communicate that generative AI tools will be used in a mediation.

Definition of AI

The term “AI” in these guidelines refers to artificial intelligence systems that create new content or outputs based on user-provided data. This includes generating text, images, or other media, recognizing patterns, and providing insights or recommendations. For example, large language models (LLMs) can generate relevant responses to prompts they receive from users.

These guidelines do **not** cover non-generative AI that operates based on fixed rules or algorithms rather than creating new content. Non-generative AI includes search engines and chatbots that deliver answers from pre-existing data or collections of information.

Revisions

This instrument is intended to be a living document, subject to revision as the field of mediation and applications using AI evolve.

PART ONE

POTENTIAL APPLICATIONS OF ARTIFICIAL INTELLIGENCE

This part of the guidelines provides a non-exhaustive list of ways that AI can facilitate and enhance mediations. These applications are subject to the safeguards set out in Part Two.

1. General Uses

1.1 Facilitating Administrative Tasks

AI can assist with the efficient performance of administrative tasks that support mediations. This includes help with scheduling meetings, organizing information, and drafting correspondence and documents.

1.2 Synthesizing Information

AI can rapidly summarize documents and written correspondence, extract relevant information, and present the results in a clear and concise manner.

1.3 Analyzing Information

AI can assist with analyzing information by identifying patterns, spotting inconsistencies, and highlighting important details. It can answer user questions about information in correspondence and documents.

1.4 Performing Research

AI can conduct research related to mediations and rapidly retrieve responsive information. It can, for example, assist with legal analysis and gathering data such as market trends, industry standards, and financial information.

1.5 Improving Communication

AI can improve communication by generating clear and well-structured texts. It can analyze communication styles and preferences of Mediation Participants, enabling customized responses that can improve understanding and build trust.

1.6 Aiding Mediator Selection

AI can assist in selecting suitable mediators by detecting potential conflicts of interest and aligning choices with the parties' preferences.

1.7 Language Support

AI can translate documents and correspondence as well as provide real-time interpretation and language support in mediation sessions.

1.8 Making Informed Decisions in Real Time

AI can assist mediators by providing insights and recommendations during mediation sessions, while helping parties evaluate proposals, explore alternative solutions, and assess potential outcomes.

1.9 Generating Options for Dispute Resolution

AI can generate creative options for settling disputes and identify common ground that might not be immediately apparent. It can gauge the potential for resolution under various scenarios and evaluate the long-term results of different outcomes, helping predict whether proposed solutions would meet the needs of the parties.

1.10 Supporting Practice Development

AI can evaluate information about past mediations and provide feedback to improve professional skills and case administration. It can create realistic scenarios for training purposes, allowing Mediation Participants to enhance their strategies and skills in a controlled environment.

2. Uses by Mediators

Building on the general applications discussed in Section 1, this section identifies specific applications for mediators:

2.1 Case Assessments

AI can assist mediators to screen disputes and analyze their suitability for mediation.

2.2 Customizing Mediation Procedures

AI can assist mediators to tailor mediations to the specific needs and preferences of parties and suggest adjustments as the proceedings progress.

2.3 Enhancing Understanding of Disputes

AI can generate concise summaries of key case details, create detailed timelines of events, and trace participants' involvement in disputes, offering an overview of their roles and relevance to the dispute.

2.4 Enhancing Analysis of Disputes

AI can enhance dispute analysis by evaluating party positions and assisting in the identification of the core issues in dispute. It can analyze the history of disputes, assess power dynamics between the parties, and identify legal or procedural barriers that may influence the mediation process and outcomes.

2.5 Preparing for Mediation Sessions

AI can help mediators prepare for mediation sessions by generating targeted questions, identifying potential challenges, and suggesting approaches for addressing challenges and sensitive topics.

2.6 Promoting Balanced Treatment of Parties

AI can assist the mediator in monitoring the mediation process, identifying imbalances or issues that may inhibit equal treatment, and ensuring that the information and guidance provided to parties is balanced and complete.

3. Use by Parties and Party Representatives

Building on the general applications discussed in Section 1, this section identifies specific applications for parties and party representatives:

3.1 Performing Litigation Risk Analysis

AI can assist parties and party counsel in determining the appropriateness of mediation by evaluating the strength of claims, assessing the likelihood of settlement, and comparing the costs and timeframes of mediation with other dispute resolution methods.

3.2 Preparing Position and Interest Papers

AI can assist in drafting position and interest papers for mediators that summarize each party's position and interests early in the mediation process. It can help determine the most relevant information to include, how to present it effectively, and which additional documents, if any, should accompany the statements.

3.3 Preparing for Mediation Sessions

AI can help parties to draft opening statements and suggest strategies to achieve their desired outcomes.

3.4 Assisting with the Drafting of Settlement Agreements

AI can assist in drafting settlement agreements by generating initial drafts based on the terms agreed upon during mediation. It can suggest standardized clauses, help ensure that all necessary legal elements are included, and help customize the language to reflect the specific needs and intentions of the parties. AI can also help parties quickly analyze and revise drafts, making the agreement finalization process more efficient and accurate.

4. Uses by Mediation Institutions

Building on the general applications discussed in Section 1, this section identifies specific applications for mediation institutions:

4.1 Interpreting Dispute Resolution Clauses

AI can analyze unclear or conflicting dispute resolution clauses within applicable legal frameworks to help mediation institutions make decisions about interpretation.

4.2 Determining Costs

AI can determine administrative and mediator fees in cases where the rules allow flexibility. This includes situations where fees are determined *ad valorem* and the amount in dispute is unstated or indeterminable.

4.3 Calculating Payments and Fee Balances

AI can help determine the appropriate advance payment amounts required from the parties, ensuring they align with the specific needs and complexities of the case. AI can also calculate the final balance of administrative and mediator fees after the mediation process is completed, ensuring accurate and transparent financial management throughout the process.

4.4 Compliance with Mediation Rules

AI can assess whether institutional rules are being followed during case administration. It can also propose potential revisions to the institutional rules based on insights gained from past cases, ensuring that the rules evolve to better address the needs and challenges encountered.

4.5 Evaluating Parties' Changes to Mediation Rules

AI can assist in assessing the implications of modifications to mediation rules proposed by parties, ensuring that these changes do not undermine the mediation process or the institution's ability to administer the mediation effectively.

4.6 Assessing Compliance with the Singapore Convention

AI can assist in ensuring that any certifications required under Article 4 of the Singapore Convention on Mediation adhere to applicable confidentiality rules. If confidentiality must be waived for judicial reasons, AI can help maintain privacy by revealing only the essential information needed for compliance.

4.7 Improving Services

AI can assist in analyzing operations over time, identifying trends and areas for improvement in case administration. AI can also assist mediation institutions in ensuring consistency in practices and decisions over time.

PART TWO

SAFEGUARDS FOR THE USE OF ARTIFICIAL INTELLIGENCE

This part of the guidelines identifies safeguards for using AI tools in mediations. The safeguards are not intended to override any legal obligations, ethical duties, professional conduct rules, or other binding regulations applicable to mediations or those participating in mediations.

1. CONSENT AND SELF-DETERMINATION

Mediation is a consensual process in which the parties usually participate voluntarily.

Parties in mediation have full control over decision-making about their dispute.

1.1. AI tools can provide insights and recommendations, but their outputs may include errors, biases, and inaccuracies. Users of AI should assess the outputs generated and make independent decisions about their reliability and appropriateness rather than rely on the outputs as a final authority.

1.2. Any legal advice provided by AI should be subject to review by legal professionals.

2. CONFIDENTIALITY

The mediation process and the information exchanged within it are considered confidential.

2.1. Users of AI should take reasonable steps to ensure that confidential information related to the mediation is not compromised by AI tools. Confidential information that is entered into proprietary and open-source large language models may be vulnerable to data breaches and unintended disclosure. The risk of unauthorized disclosure can be mitigated by anonymizing and limiting the information entered to what is necessary to achieve the desired outputs.

3. NEUTRALITY, IMPARTIALITY, AND INDEPENDENCE

Mediators must be neutral, impartial, and independent.

- 3.1. Users of AI should take reasonable steps to ensure that the use of AI does not compromise the neutrality, impartiality, and independence of mediators. This risk can be mitigated by phrasing prompts in clear and neutral terms, varying the language of prompts, and comparing outputs from different AI models.

4. BALANCED PROCESS

The mediation process must be balanced, ensuring that all parties have equal opportunities to participate and express their views.

- 4.1. Mediators and Mediation Institutions should inform parties of their right to raise concerns if they believe that AI tools are compromising the integrity of a mediation.
- 4.2. Any Mediation Participant may request information about the AI tools that another Mediation Participant plans to use or is using. The recipient of the request should identify the tools and explain their purposes to all Mediation Participants. If concerns arise about a tool's use, the Mediation Participants should work together to resolve the issue. If the issue cannot be resolved, the use of the tool should be discontinued by the Mediation Participants.

PART THREE

SAMPLE AI USAGE STATEMENT

The following statement can be used by Mediation Participants to inform other Mediation Participants about the AI tools used in the mediation process, their purposes, and potential risks.

“I am using generative artificial intelligence (AI) tools to assist with this mediation. The tools are listed below along with the reasons for their use:

[List of tools including a link to each tool’s terms and conditions and the reasons for the use]

In using these tools, I will seek to comply with all applicable data protection laws *[consider inserting explicit references here]*.

I will also make reasonable efforts to ensure that all information related to this mediation that is entered into and processed by the AI tools remains confidential. This includes data input into proprietary and publicly accessible platforms, such as open-source large language models.

I am aware that AI-generated content may include errors, biases, and inaccuracies. I will assess the outputs and make my own independent decisions about their use rather than rely on AI-generated content as a final authority.”