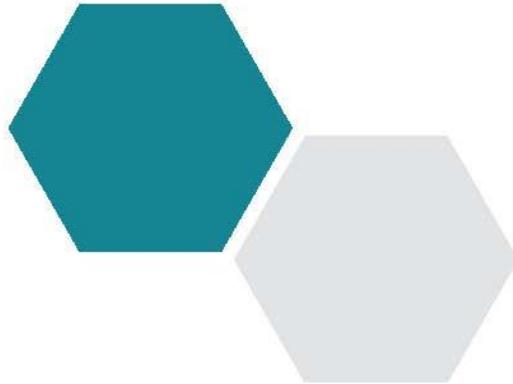
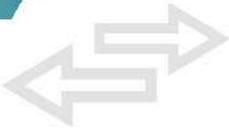




## **Mediate to Resolve**



„mediation: a real alternative to litigation

“





# Mediate don't Litigate!

**Mediation =**

- listen
- facilitate
- communicate
- empathise
- respect
- explore
- confidential
- good faith
- integrity
- involve
- respond
- enlighten
- liaise
- flexible
- constructive
- impartial
- reconcile
- negotiate
- settlement

**mediation a real alternative to litigation**  
 ACID's (Anti Copying

in Design) national, Intellectual Property (IP) specialist Mediate to Resolve service for alternative dispute resolution (ADR) is based on the organisation's extensive experience handling mediations. Time is money, so for the majority of business to business disputes, mediation can be a cost effective alternative to going through an expensive Court process. It also saves valuable management time which could otherwise be used on business building and growth. Increasingly, Judges are looking more favourably on parties who have first tried to mediate much earlier, at the beginning of a dispute rather than when parties are entrenched in what can often be an expensive legal process.

Mediation enables parties in a dispute to craft their own settlement with the help of an experienced mediator. A mediation framework is, by nature, non adversarial and an independent mediator can facilitate a route to resolution which is acceptable to both parties usually in a timely manner.

According to CEDR (The Centre for Effective Dispute Resolution), 85% of mediations result in settlement or significant progress.

So whatever the dispute, whatever the subject matter and as long as both parties agree to the process, mediation offers a real alternative to litigation. The process is confidential, informal and flexible and often can help to preserve rather than destroy a commercial relationship.

ACID has spent many years encouraging parties in disputes to seek mediation and has a proven track record in successful and effective alternative dispute resolution. The ACID scheme does not involve lawyers and is not just confined to intellectual property but open to all within the creative industries on diverse issues. Most, but not all legal disputes are suitable for mediation think about the alternatives first! Mediate don't Litigate.

If you do come up against an IP legal issue with a third party (and there are legal grounds for the complaint) think about mediation before litigation.

It's good to talk, let ACID act as a conduit.

Foreword by ACID's Dids Macdonald, OBE

# What does Mediation Offer?

**Flexibility:** Mediation is a flexible process conducted confidentially in which a neutral person actively assists parties in working towards a negotiated agreement of a dispute or difference with the parties in ultimate control of the decision to settle and the terms of resolution.

nature is adversarial and often irreparably damages relationships whereas mediation encourages communication and co-operation between the parties and can often preserve relationships and generate future business.

## 7 Maintains relationships: Litigation by its very

**Your own settlement:** Mediation enables the parties to craft their own settlement and agree terms of settlement that can exceed the possible remedies made available by a Court. In contrast, a judge is constrained in the remedies he can award.

mediate. Indeed, a Court may award the successful party in litigation to pay the costs of the loser if the winning party has unreasonably refused to mediate. Parties are invited at several moments in the litigation timetable to opt for mediation and if they fail to accept this invitation the Courts may punish the parties.

## 8 Courts expect mediation: Recent cases have shown that the Court may deny winners at trial

## 3 Nothing to lose: By entering into mediation,

their costs and expenses if they have unreasonably refused to neither party loses their right to pursue other dispute resolution methods such as litigation. It can take place at any time, including during litigation.

## 4 Cost and time: Mediation is considerably less expensive than litigation and occupies less

management time. A mediator can bring value to the process, giving the parties the best opportunity to have a constructive discussion at an early stage, before legal costs escalate and become a stumbling block.



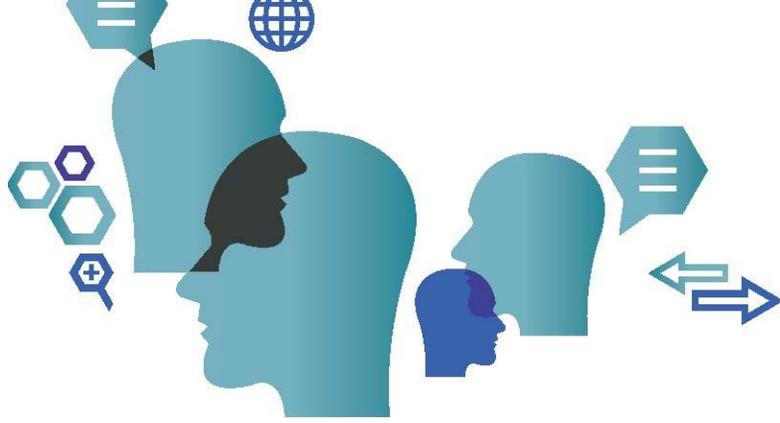
## 5 Selection of Neutral: The parties can select their mediator, who can be trusted and respected by

both parties and is an expert in his field.

## 6 Confidential: The mediation is completely

confidential, unlike litigation, which is open to public scrutiny. The 'without prejudice' nature which means that the information disclosed during mediation cannot subsequently be used in court. The settlement reached by the parties sets no precedent so is ideal should a party want to treat the dispute as a one-off.





## ACID Mediation - The Process

Mediation focuses on the wider commercial picture and on the points of agreement rather than dispute. ACID encourages all

parties to fully prepare for their mediation, to understand the procedure in detail and to get the best possible outcome from the process. Familiarisation with the format will make all concerned feel more comfortable with what can be an unpredictable, and at times, stressful situation. See our document 'Preparing for Mediation' for more information.

 The mediator appointed will be a qualified accredited mediator with a proven track record in mediations.

Each party will receive a one hour telephone call with the mediator prior to mediation to discuss the issue.



A mutually agreeable location is selected with the agreement of both parties.



Each party will be welcomed by the mediator and assistant mediator (if present) and given a copy of the Agreement to Mediate, signed by all parties. The mediator will then invite both parties to the joint meeting room to introduce him/herself and the assistant mediator and will confirm that all parties understand the process and have read and understood the Preparing for Mediation document.



Unless there is anything further to discuss at this stage, each party will begin by having meetings with the mediator in turn. This is known as the Caucus process.

Some ACID mediations are limited to half a day but some may require a full day. During this period the mediator will, by meeting privately with each party, use his/her skills to explore all options and work towards fully understanding all of the issues involved to help both parties resolve the Dispute.



These break-out individual meetings are for exploration, bargaining and negotiation.



All private meetings are confidential and no information will be passed to the other party without the express permission of the party involved.

With the agreement of both parties, there may be several joint meetings during the mediation process.



If no agreement is reached, nothing said during the course of the mediation can be referred to in any subsequent proceedings. In the event of no agreement being reached, both parties agree that the mediator will not be required to give evidence in any proceedings that may subsequently follow.



If an agreement is reached, it will be formalised in writing by the mediator at the time although further legal work may be required if, for example, a licence or royalty agreement is agreed.







What is an Agreement to Mediate?



This document provides the mediator with the authority of each of the parties to settle the dispute on the day of mediation: The agreement to mediate sets out the names of the parties involved in the mediation and the name of the mediator.



Signing the Agreement to Mediate confirms that the signatory will have the authority to settle the dispute and sign any



agreement which may be created on the day of the mediation.



Signatories agree that the mediation is confidential and "without prejudice". In other words, the parties may not refer



subsequently to anything which is said in the mediation should it not result in an agreement. No settlement



agreement is binding until it has been written down and signed by both parties.



Signing this agreement confirms that both parties will approach mediation in good faith with the mediator and each other

during the mediation.

At the mediation, the mediator will ask both parties to confirm that they have read and understood the Agreement to

Mediate and that they have signed 3 copies of the Agreement prior to the mediation and returned these to ACID. Each party will be given a copy of the Agreement to

Mediate, signed by all parties, to retain. If you have any queries about any terms of the Agreement to Mediate, please raise these with ACID prior to the mediation.



When is Mediation appropriate?

Mediation is appropriate in many dispute situations!

Every IP dispute can be mediated, but some are less suitable for mediation, for example, cases of blatant piracy or cases where one party needs a Court order or the Court to set a precedent in law. Mediation is almost always far cheaper than litigation and occupies less management time in the long run and is less stressful than litigation.

How does a mediator help?

Very often the mediator can help with negotiations that would otherwise breakdown if the parties were to try to resolve issues between themselves. Mediation should be considered as part of the litigation strategy early on, before the parties have become too entrenched in their positions or incurred legal costs, which could be a barrier to settlement.

The role of an Assistant Mediator

From time to time an ACID Mediation may involve the services of an Assistant Mediator for which there will be no extra charge. This will be someone who has trained to become a mediator and obtained a recognisable qualification such as being accredited by CEDR and who intends to become a registered mediator.

They will use this opportunity not only to assist the mediator, but to gain practical experience of the process and content of mediation. They will not take an active part in the mediation but their role is to assist the mediator including managing the practical aspects of the day e.g. the comfort of the participants, taking notes and ensuring effective time-management. Having an assistant provides the mediator with a professional companion and may offer valuable perspectives as an impartial observer and sounding board for the mediator between sessions.

ACID Mediate to Resolve has a national network of accredited mediators. If you require advice on whether your issue is suitable for mediation please contact ACID on 0845 644 3617 and your details will be taken and information on the

*“As a Judge I have seen, only too often, how parties to a dispute can become locked into litigation when mediation at an early stage might well have resulted in a satisfactory compromise. Having regard to the inevitable cost, time and stress of litigation – to say nothing of the risk of losing the case – mediation must always be worth a try. However much he or she might wish to do so, the Judge hearing a case cannot sit down with the parties, together and separately, to discuss with them informally and confidentially whether a compromise might be possible; yet that is precisely what the mediator is there to do. That is why I am committed to the concept of mediation.”*

mediation process will be emailed to you.

Former High Court Judge, Sir Jonathan Parker





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