

Mediation Policy
of the
World Privacy and Identity Association (WPIA)



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as of 2019-01-01

Table of Contents

§ 1 Introductory Provisions.....	3
§ 2 Definitions.....	3
§ 3 Commencing the Proceedings.....	3
§ 4 Registration Fee.....	4
§ 5 Place of the Meetings and Sessions.....	4
§ 6 Language of the Proceedings.....	4
§ 7 Appointment of the Mediator.....	4
§ 8 Advance on Costs and Costs.....	5
§ 9 Conduct of the Proceedings.....	5
§ 10 Parallel Proceedings.....	6
§ 11 Termination of the Proceedings.....	6
§ 12 Confidentiality, Admissibility of Evidence and Subsequent Party Representation....	7
§ 13 Disclaimer.....	7
§ 14 Transitional Provisions.....	7

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§ 1 Introductory Provisions

- (1) The Rules of Mediation of the WPIA (hereinafter “Mediation Rules”) shall apply in the version applicable at the time of the commencement of the Proceedings if the parties, before or after the dispute has arisen, agree to submit their dispute to the Mediation Rules.
- (2) The Mediation Rules may be amended by a written agreement of all parties. Following the appointment of the mediator, every amendment is also subject to the mediator's consent.
- (3) The arbitration commission may refuse to administer Proceedings under the Mediation Rules if any agreed amendments are incompatible with the Mediation Rules.
- (4) This Mediation Rules shall apply to members and representatives of the WPIA and its affiliated cooperative. They shall not apply to the Fellowship.

§ 2 Definitions

- (1) In the Mediation Rules
 - a) **Proceedings** refers to a mediation, any other alternative dispute resolution method chosen by the parties, or a combination of dispute resolution methods that are supported by a mediator and conducted under the Mediation Rules;
 - b) **Mediator** refers to one or more neutral third persons who support the parties in the resolution of their dispute;
 - c) **Party** refers to one or more parties who agree or have agreed to submit their dispute to the Mediation Rules.
- (2) To the extent the terms used in the Mediation Rules refer to natural persons, the form chosen shall apply to any gender.

§ 3 Commencing the Proceedings

- (1) Any party wishing to commence Proceedings under the Mediation Rules shall submit a written request to the arbitration commission. Telecommunication transmission e.g. by telefax or e-mail is sufficient. The Proceedings shall be deemed to commence on the date on which the request is received by the arbitration commission in the event of an agreement of the parties to submit their dispute to the Vienna Mediation Rules. Absent such an agreement, the Proceedings shall be deemed to commence on the date on which such agreement was subsequently concluded by the parties.
- (2) A copy of the request including exhibits shall be submitted for each party who did not submit the request, each mediator, and the arbitration commission.
- (3) The request shall include the following:
 - a) the full names and contact details of the parties;
 - b) a short description of the facts and the dispute;
 - c) where available the amount in dispute;
 - d) the full name and contact details of the mediator nominated, or attributes that a mediator to be appointed should possess;
 - e) particulars or proposals regarding an agreement of the parties to submit their dispute under the Mediation Rules, in particular as regards
 - i. the number of mediators;

- ii. the language(s) to be used in the Proceedings.
- (4) The arbitration commission shall confirm receipt of the request and serve the request on the other party and invite comments within a set time limit provided that the request was not submitted jointly by all parties.

§ 4 Registration Fee

Registration fees will **not** be charged.

§ 5 Place of the Meetings and Sessions

Irrespective of any preceding or parallel arbitral proceedings, the mediator shall, in consultation with the parties and after giving due consideration to all the circumstances, determine the place of the mediation meeting(s) or session(s). The mediator may determine a different place for each meeting or session, if he deems that to be appropriate. Places of the meetings and sessions specially include telephone conferences, chats and online conferences.

§ 6 Language of the Proceedings

Immediately after transmission of the file (§ 9 para (1)), the mediator, after consultation with the parties and giving due consideration to all the circumstances, shall determine the language(s) of the Proceedings.

§ 7 Appointment of the Mediator

- (1) Absent an agreement of the parties regarding the identity of the mediator or his mode of appointment, the arbitration commission shall invite the parties to jointly nominate a mediator and indicate his name and contact details within a set time limit.
- (2) The arbitration commission may assist the parties in the joint nomination of the mediator in particular by proposing one or more mediators from which the parties may jointly nominate one or more mediators. If the parties fail to jointly nominate a mediator, the arbitration commission shall appoint the mediator. In doing so, the arbitration commission shall give due consideration to the parties' preferences as to the mediator's attributes.
- (3) Prior to the appointment of the mediator by the arbitration commission or the confirmation of the nominated mediator, the mediator shall sign and submit to the arbitration commission a declaration confirming his
 - a) impartiality and independence,
 - b) availability,
 - c) acceptance of office, and
 - d) submission to the Mediation Rules.

The mediator shall disclose in writing all circumstances that could give rise to doubts as to his impartiality or independence or that conflict with the agreement of the parties. This duty of the mediator continues to apply throughout the Proceedings. The arbitration commission shall forward a copy of these statements to the parties for comments.

- (4) If there are no doubts as to the impartiality and independence of the mediator and his ability to duly carry out his mandate, the appointed arbitration commission member shall appoint the mediator or the arbitration commission shall confirm the nominated mediator. If deemed necessary by the appointed arbitration commission member, the arbitration commission shall decide whether to confirm a nominated mediator. Upon confirmation the nominated mediator shall be deemed appointed.
- (5) If the confirmation of a mediator is rejected or if the exchange of a mediator becomes necessary, paras (1) to (4) shall apply mutatis mutandis.

§ 8 Advance on Costs and Costs

- (1) The arbitration commission shall in specified cases determine the prospective administrative fees, the anticipated expenses (such as travel and subsistence costs of the mediator, delivery charges, rent etc). This shall be paid by the parties prior to the transmission of the file to the mediator within a time limit set by the arbitration commission.
- (2) Upon transmission of the file, the mediator shall provide an estimate of the prospective duration of the Proceedings as well as his expenses. Thereupon, the arbitration commission shall determine the advance on costs as necessary, which shall be paid by the parties prior to the first session with the mediator.
- (3) Once it becomes foreseeable that the Proceedings will not be completed within the estimated manner, the mediator shall immediately inform the arbitration commission, who shall then set further costs in the required amount.
- (4) Unless the parties have agreed otherwise in writing, the advances on cost shall be borne by the parties in equal shares. If the advance on costs allocated to one party is not received or not received in full within the time limit specified, the arbitration commission shall inform the other party. The other party is free to bear the outstanding share of the advance on costs. If this share is not paid within the time limit specified, the arbitration commission may suspend the Proceedings or declare the Proceedings terminated.
- (5) Upon termination of the Proceedings, the arbitration commission shall calculate the administrative if necessary according to para (1).
- (6) The expenses shall be determined according to the actual expenditure.
- (7) Unless otherwise agreed in writing, the parties shall bear their own costs, including the costs of legal representation.

§ 9 Conduct of the Proceedings

- (1) The arbitration commission shall transmit the file to the mediator if
 - a) a request in accordance with § 3 has been submitted;
 - b) the mediator has been appointed; and
 - c) the costs in accordance with § 8 para (1) have been paid in full.
- (2) The mediator shall promptly discuss with the parties the manner in which the Proceedings shall be conducted. He shall assist the parties in finding an acceptable and satisfactory solution for their dispute. In conducting the Proceedings, the mediator shall be in control of the Proceedings but will let himself be guided by the wishes of the parties insofar as they are in agreement and consistent with the purpose of the Proceedings.

- (3) The Proceedings may be conducted in person or through virtual means. The parties are free to select their mediation team in conjunction with guidance from the mediator. Each party shall be represented in a meeting or session with the mediator by a duly appointed and authorized person including the authorization to settle.
- (4) Throughout the Proceedings, the parties shall act in good faith, fairly and respectfully. Each party takes on the obligation to participate in at least one session with the mediator, unless the Proceedings are terminated prematurely in accordance with § 11 para (1) subpara e.
- (5) Sessions with the mediator are not public. Only the following individuals shall be allowed to attend:
 - a) the mediator;
 - b) the parties; and
 - c) persons whose attendance was announced to the mediator and the other party in a timely manner before the respective session and who have signed a written confidentiality agreement in accordance with § 12.
- (6) If he considers it appropriate, the mediator may meet with a party in the absence of the other party (caucus). The mediator shall keep confidential the information given by one party in the absence of the other party, unless the party giving the information expressly waives such confidentiality vis-à-vis the other party and the mediator agrees to pass on such information.

§ 10 Parallel Proceedings

A party may commence or continue any judicial, arbitral or other proceedings in respect of the same dispute, irrespective of whether parallel Proceedings are being conducted under the Mediation Rules.

§ 11 Termination of the Proceedings

- (1) The Proceedings shall be terminated by way of a written confirmation of the arbitration commission to the parties and upon occurrence of the earliest of the following circumstances:
 - a) an agreement of the parties for the settlement of the entire dispute;
 - b) the notification in writing by any party to the mediator or the arbitration commission that it does not wish to continue the Proceedings, provided that at least one session with the mediator has taken place, or that no such session has taken place within two months of the mediator's appointment, or that the time frame agreed for the Proceedings has expired;
 - c) the notification in writing by the mediator to the parties that the Proceedings will, in his opinion, not resolve the dispute between them;
 - d) the notification in writing by the mediator to the parties that the Proceedings are terminated;
 - e) the notification in writing by the arbitration commission regarding the failure
 - i. to appoint a mediator in accordance with § 7 paras (1) to (4);
 - ii. to comply with a payment order in a timely manner.
- (2) The Proceedings may also be terminated in part if one of the grounds for termination listed under para (1) applies only to a part of the dispute.
- (3) In the cases listed under para (1), subparagraphs b to d and para (2), the mediator shall immediately inform the arbitration commission of the circumstance of the termination.

§ 12 Confidentiality, Admissibility of Evidence and Subsequent Party Representation

- (1) The individuals listed under § 9 para (5) shall treat confidential anything that has come to their attention in connection with the Proceedings and that would not have come to their attention had the Proceedings not taken place.
- (2) Any written documents that were obtained during the Proceedings and would otherwise not have been obtained shall not be used in subsequent judicial, arbitral or other proceedings. Any statements, views, proposals and admissions made during the Proceedings as well as one party's willingness to settle the dispute amicably, shall also remain confidential. Regarding all of the above, the mediator shall not be called as a witness.
- (3) The obligations under paras (1) and (2) shall not apply if the law governing these proceedings contains a mandatory provision to the contrary or if it is required for the implementation or the enforcement of an agreement terminating these proceedings.
- (4) The fact that the Proceedings are taking place, have taken place or will take place shall not be confidential.
- (5) The mediator shall not act as attorney or represent the parties in any other capacity nor being involved or otherwise advise the parties in judicial, arbitral or other proceedings regarding the dispute that constitutes or constituted the subject matter of the Proceedings.

§ 13 Disclaimer

The liability of the mediator, the arbitration commission, the appointed arbitration commission member, including its employees for any act or omission in relation to Proceedings under the Mediation Rules is excluded to the extent legally permissible.

§ 14 Transitional Provisions

- (1) The Mediation Rules will take effect for all Proceedings on 1.1.2019
- (2) Where the parties have submitted their dispute to the arbitration procedure rules prior to the entry into force of the Mediation Rules, the Mediation Rules shall apply unless one of the parties puts forward a written objection. In such case the arbitration procedure rules shall apply