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Algorithmic Mediation: Redefining Neutrality in Digital Copyright Disputes

SANDHYA SHARMA* AND DR. RAKESH KUMARI MALIK**

ABSTRACT

The rapid expansion of digital platforms and generative artificial intelligence (AI) has outpaced traditional copyright litigation, which remains slow, costly, and constrained by territorial jurisdiction. Scholarly debate has concentrated largely on substantive questions such as AI authorship and the legality of training data, while the procedural architecture for resolving complex, high-volume copyright disputes has received comparatively little attention. This paper examines algorithmic mediation as an emerging stage in the evolution of Online Dispute Resolution (ODR). Using doctrinal and comparative methods, it evaluates three established models of technology-enabled intellectual property (IP) dispute resolution: the WIPO Arbitration and Mediation Center, ICANN's Uniform Domain Name Dispute Resolution Policy (UDRP), and platform-based enforcement systems, including YouTube's Content ID and statutory notice-and-takedown procedures. It also examines the Indian legal framework, including the Mediation Act, 2023, and recent regulatory developments in the European Union. The analysis shows that existing systems achieve speed and scale, but often at the cost of transparency, contestability, and balance between rights holders and users. Building on these findings, the paper proposes a hybrid AI-assisted mediation model in which algorithmic decision-support tools analyse similarity patterns, organise evidence, and structure negotiations, while a human mediator retains control over the process and its outcome. It argues that neutrality in this setting must be redefined: it can no longer rest solely on the personal impartiality of the mediator, but must extend to the design, data, and auditability of the system itself. The paper concludes that AI can substantially improve procedural efficiency and access to dispute resolution, provided that human oversight, disclosure, and review are built into the process.

Keywords: *Algorithmic Mediation, Online Dispute Resolution (ODR), Digital Copyright Disputes, AI-Assisted Neutrality, Intellectual Property Governance, Mediation Act, 2023*

* Author is a Research Scholar at School of Law, SGT University, Gurugram, Haryana, India. ORCID: https://orcid.org/0009-0003-9748-4389

** Author is an Associate Professor at School of Law, SGT University, Gurugram, Haryana, India.

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I. Introduction

Copyright law was designed for a world of identifiable copies, known publishers, and courts that could afford to take their time. Each of these assumptions has weakened considerably. A single video-sharing platform now processes more than two billion automated copyright claims in a year.[1] Generative AI systems are trained on enormous collections of protected text, images, and sound, and the parties to a dispute are frequently located in different countries, while using a service governed by the law of a third. Litigation remains the formal answer to infringement, but for most digital copyright conflicts, it is not a practical one. The value of an individual claim is usually modest, the cost of proceedings is high, and questions of jurisdiction and enforcement can absorb more time than the merits themselves.

The gap left by litigation has been largely filled by private ordering. Platforms detect, classify, and act upon allegedly infringing material through automated systems, and the user who wishes to object must do so within a procedure designed and operated by the platform. Maayan Perel and Niva Elkin-Koren have described this arrangement as one in which the powers of enforcement and adjudication converge in the hands of a small number of profit-maximising intermediaries.[2] The result is a system that is fast and capable of operating at scale, but which offers little in the way of reasoned decisions, independent review, or genuine negotiation between the parties.

Scholarly attention to copyright and artificial intelligence has, for understandable reasons, concentrated on substantive questions: whether AI-generated output can be protected, who its author might be, and whether training a model on copyrighted works is lawful. The procedural question has received less attention. If copyright disputes in digital markets are increasingly numerous, cross-border, and technically complex, what kind of dispute resolution process is suited to them? Mediation is an obvious candidate because many such disputes are, at the bottom, disagreements about attribution, licensing terms, or the sharing of revenue rather than about whether infringement has occurred at all. Yet, mediation is a human, conversational, and relatively slow process, and the volume of digital disputes appears to demand automation. This tension frames the present study. The paper asks whether algorithmic tools can be integrated into mediation without undermining the neutrality on which mediation depends, and what

[1] *YouTube Processed 2.5 Billion Content ID Copyright Claims in 2025*, TorrentFreak (June 6, 2026), https://torrentfreak.com/youtube-processed-2-5-billion-content-id-copyright-claims-in-2025/ (reporting 2,502,941,368 Content ID claims in 2025, an increase of about fourteen per cent over the 2.2 billion claims processed in 2024).

[2] Maayan Perel & Niva Elkin-Koren, *Accountability in Algorithmic Copyright Enforcement*, 19 Stan. Tech. L. Rev. 473, 473 (2016).

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design and governance features a hybrid model would require to be fair, effective, and compatible with the Indian legal framework. The study is doctrinal and comparative; figures on caseloads and outcomes are drawn from published institutional reports.

A. Structure of the paper

Part II sets out the conceptual framework, tracing the development of online dispute resolution and examining the meaning of neutrality in mediation theory. Part III evaluates the three models. Part IV analyses the Indian legal position, and Part V considers European regulatory developments. Part VI examines the sources of algorithmic partiality and proposes a reconceptualised understanding of neutrality. Part VII presents a hybrid AI-assisted mediation model, and Part VIII concludes.

II. Conceptual framework

A. From alternative to online dispute resolution

Online dispute resolution (ODR) emerged in the late 1990s as commercial activity moved onto the Internet and it became apparent that courts were poorly placed to resolve low-value disputes between parties who had never met. Ethan Katsh and Janet Rifkin offered an influential way of understanding this change. In their account, technology functions as a "fourth party" that sits alongside the two disputants and the neutral third party, shaping how information is presented, how communication occurs, and what options are visible.[3] The fourth party may play a modest role, as a channel for exchanging documents, or a more active one, by organising issues and suggesting outcomes.

Later, Katsh and Orna Rabinovich-Einy observed that digital technology is now both a source of disputes and a means of resolving them.[4] Platforms that generate millions of transactions inevitably generate millions of disagreements, which can only be handled by automated or semi-automated processes. The same authors have argued that the logic of ODR, which emphasises prevention and the use of data to improve processes over time, is beginning to influence courts themselves.[5]

International soft law has followed. The UNCITRAL Technical Notes on Online Dispute Resolution, adopted in 2016, identify impartiality, independence, efficiency, effectiveness, due

[3] Ethan Katsh & Janet Rifkin, Online Dispute Resolution: Resolving Conflicts in Cyberspace 93–94 (2001).
[4] Ethan Katsh & Orna Rabinovich-Einy, Digital Justice: Technology and the Internet of Disputes 1–5 (2017).
[5] Orna Rabinovich-Einy & Ethan Katsh, *The New New Courts*, 67 Am. U. L. Rev. 165, 170 (2017); *see also* Richard Susskind, Online Courts and the Future of Justice 27–30 (2019).

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process, fairness, accountability and transparency as the principles that should guide ODR processes.[6] In India, an expert committee constituted by NITI Aayog under the chairmanship of Justice (Retd.) A.K. Sikri released a policy plan in 2021 recommending a phased adoption of ODR, beginning with government departments and expanding to private disputes.[7] The policy plan treats ODR as a means of widening access to justice rather than only as a mechanism for reducing judicial backlog.

B. Defining algorithmic mediation

The term "algorithmic mediation" needs careful definition because the uses of technology in dispute resolution vary greatly. Three broad categories can be distinguished. The first is facilitative technology: video conferencing, secure document exchange, and electronic signatures. These tools change the medium but not the substance of the process. The second is decision-support technology, which analyses information, organises issues, suggests options, or estimates likely outcomes, while leaving the decision with the parties or a human neutral. The third is automated determination, in which software itself produces an outcome that binds or materially affects the parties.

Algorithmic mediation, as used in this paper, belongs to the second category. It refers to a mediation process in which software performs defined analytical and organisational tasks, but in which settlement remains consensual and a human mediator directs the process. It must therefore be distinguished from automated adjudication of the kind performed by Content ID, where a matching algorithm effectively decides whether a claim is made, and from simple blind-bidding tools that settle monetary disputes by comparing confidential offers. Arno Lodder and John Zeleznikow proposed an early version of this approach, describing a three-step model in which online dialogue is followed by negotiation support using decision-analytic techniques, and only then, if necessary, by conventional mediation or arbitration.[8]

In copyright disputes, several analytical tasks lend themselves to such support. Audio and video fingerprinting, perceptual hashing, and text-comparison tools can measure the degree of overlap between two works. Databases of licensing transactions can indicate a range of commercially reasonable fees. Structured questionnaires can bring out the facts relevant to statutory exceptions, such as fair dealing. However, such tools cannot reliably reach the evaluative

[6] U.N. COMM'N ON INT'L TRADE L., *UNCITRAL Technical Notes on Online Dispute Resolution* ¶ 4 (2017), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf.

[7] NITI AAYOG EXPERT COMM. ON ODR, *Designing the Future of Dispute Resolution: The ODR Policy Plan for India* (Oct. 2021), https://www.niti.gov.in/sites/default/files/2021-11/odr-report-29-11-2021.pdf.

[8] Arno R. Lodder & John Zeleznikow, *Developing an Online Dispute Resolution Environment: Dialogue Tools and Negotiation Support Systems in a Three-Step Model*, 10 HARV. NEGOT. L. REV. 287, 300–02 (2005).

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conclusions that copyright law requires. Dan Burk has argued that fair use is a standard rather than a rule and that attempts to encode it in software are likely to flatten its contextual character.[9] Niva Elkin-Koren, while more open to the possibility of designing systems that accommodate fair use, has likewise emphasised that current enforcement technologies are built to detect matches rather than to recognise lawful uses.[10] The proper role of software in copyright mediation is therefore to inform the parties, not to decide for them.

C. Neutrality in mediation theory

Neutrality is often described as the defining characteristic of a mediator. In its conventional sense, it has two elements: impartiality, meaning the absence of bias or favouritism towards any party, and even-handedness in the conduct of the process. The Model Standards of Conduct for Mediators adopted in the United States, for example, require a mediator to decline or withdraw from a mediation that cannot be conducted impartially and to avoid conduct that gives the appearance of partiality.[11] Lon Fuller located the value of the mediator in a capacity to reorient the parties towards each other, helping them perceive their relationship in a new way rather than imposing a solution.[12]

The conventional account has been questioned for some time. Sara Cobb and Janet Rifkin showed, through analysis of mediation sessions, that mediators inevitably influence which narratives become dominant, so that neutrality understood as non-intervention is something of a fiction.[13] Hilary Astor responded by proposing that neutrality be understood not as an abstract state but as a set of practices aimed at supporting the parties' control over the outcome of their dispute.[14]

This debate matters for algorithmic mediation. If the neutrality of a human mediator is already contested and dependent on practice, the introduction of software adds a further layer of influence. Every tool embodies choices about what information is collected, how it is weighted, and how the results are displayed. For instance, a similarity score presented to the parties as a single percentage frames the dispute differently from a report that explains which elements

[9] Dan L. Burk, *Algorithmic Fair Use*, 86 U. CHI. L. REV. 283, 284–86 (2019).
[10] Niva Elkin-Koren, *Fair Use by Design*, 64 UCLA L. REV. 1082, 1093–95 (2017).
[11] MODEL STANDARDS OF CONDUCT FOR MEDIATORS std. II (Am. Arb. Ass'n, Am. Bar Ass'n & Ass'n for Conflict Resol. 2005).
[12] Lon L. Fuller, *Mediation: Its Forms and Functions*, 44 S. CAL. L. REV. 305, 325 (1971).
[13] Sara Cobb & Janet Rifkin, *Practice and Paradox: Deconstructing Neutrality in Mediation*, 16 LAW & SOC. INQUIRY 35, 41–43 (1991), https://doi.org/10.1111/j.1747-4469.1991.tb00283.x.
[14] Hilary Astor, *Mediator Neutrality: Making Sense of Theory and Practice*, 16 SOC. & LEGAL STUD. 221, 228–31 (2007), https://doi.org/10.1177/0964663907076531.

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match and which do not. Neutrality in algorithmic mediation, therefore, cannot be secured by the personal integrity of the mediator alone. Part VI returns to this point.

III. Existing models of technology-enabled IP dispute resolution

A. The WIPO Arbitration and Mediation Center

The WIPO Arbitration and Mediation Center, based in Geneva, is the leading specialised institution for intellectual property dispute resolution. Its caseload has grown rapidly in recent years. In 2024, the Center was involved in the resolution of 858 IP, innovation and technology disputes, an increase of twenty-five per cent over the previous year.[15] Of the 287 disputes referred under the WIPO ADR Rules that year, copyright and digital content accounted for forty-eight per cent, ahead of trademarks and patents.[16] The upward trend continued in 2025, when the Center supported the administration of 1,461 disputes, a seventy per cent increase over 2024.[17]

The Center reports that 70% of WIPO mediations have concluded in a settlement between the parties.[18] It also cooperates with national intellectual property and copyright offices through a co-administration programme, under which it supported the resolution of 559 disputes in 2024.[19] Technology plays an important administrative role: the Center's online case administration tools and videoconferencing facilities saw increasing use in the same period.[20]

Three features of the WIPO model are significant for present purposes. The first is specialisation: neutrals are drawn from a panel with expertise in intellectual property and technology. The second is institutional credibility, built over three decades, which gives parties confidence that the process is independent of either side. The third is the limited role of technology. WIPO uses digital tools to administer cases and enable remote participation; however, the analysis of the dispute and the facilitation of settlement remain human tasks. The model demonstrates that mediation of IP disputes can be effective and that cross-border parties will use it. However, it does not address the problem of volume. A process built around individually appointed mediators cannot absorb disputes numbered in the millions.

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[15] *WIPO ADR Highlights 2024*, World Intell. Prop. Org., https://www.wipo.int/amc/en/center/summary2024.html (last visited Nov. 14, 2026).
[16] *Id.*
[17] *WIPO ADR Highlights 2025*, World Intell. Prop. Org., https://www.wipo.int/amc/en/center/summary2025.html (last visited Nov. 14, 2026).
[18] *WIPO Caseload Summary*, World Intell. Prop. Org., https://www.wipo.int/amc/en/center/caseload.html (last visited Nov. 14, 2026).
[19] *WIPO ADR Highlights 2024*, *supra* note 15.
[20] *Id.*

B. ICANN's Uniform Domain Name Dispute Resolution Policy

The UDRP was adopted by ICANN in 1999, following recommendations made by WIPO, to address the abusive registration of domain names corresponding to trademarks.[21] Every registrant of a generic top-level domain agrees to the policy through a registration agreement, which makes the procedure effectively mandatory for the registrant. A complainant must establish three elements: that the domain name is identical or confusingly similar to a mark in which the complainant has rights, that the registrant has no rights or legitimate interests in the name, and that the name was registered and is being used in bad faith.[22] Remedies are limited to cancellation or transfer of the domain name,[23] and either party remains free to approach a court of competent jurisdiction.[24]

The procedure is conducted almost entirely in writing. The respondent has 20 days to reply to the complaint, and the panel is ordinarily required to forward its decision within 14 days of its appointment.[25] The scale of the system is considerable. In 2024 alone, trademark owners from 133 countries filed 6,168 cases with WIPO under the UDRP and national country-code variations, making it the second busiest year since the policy was created.[26]

The UDRP has not escaped criticism. Michael Geist's early empirical study suggested that complainants enjoyed a structural advantage, partly because they could choose the provider and providers competed for their business.[27] Laurence Helfer and Graeme Dinwoodie nonetheless identified the UDRP as an instructive example of a non-national dispute resolution system that combines private ordering with substantive standards drawn from national laws.[28]

For the design of copyright mediation, the UDRP offers two lessons. It shows that a global, high-volume process can command legitimacy when it uses a narrow and clearly defined standard, limited remedies, published decisions, and independent panellists. It also shows the limits of that approach. The UDRP works because the question it asks is relatively simple. Copyright disputes involving substantial similarity, transformative use, or fair dealing are far

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[21] *Uniform Domain Name Dispute Resolution Policy*, INTERNET CORP. FOR ASSIGNED NAMES & NOS. (Aug. 26, 1999), https://www.icann.org/resources/pages/policy-2024-02-21-en [hereinafter UDRP].
[22] *Id.* ¶ 4(a).
[23] *Id.* ¶ 4(i).
[24] *Id.* ¶ 4(k).
[25] *Rules for Uniform Domain Name Dispute Resolution Policy*, INTERNET CORP. FOR ASSIGNED NAMES & NOS. ¶¶ 5(a), 15(b), https://www.icann.org/resources/pages/udrp-rules-2015-03-11-en.
[26] *WIPO Domain Name Report 2024: UDRP Case Filings Remain Strong*, WORLD INTELL. PROP. ORG. (Jan. 15, 2025), https://www.wipo.int/amc/en/domains/news/2025/news_0001.html.
[27] Michael Geist, *Fair.com?: An Examination of the Allegations of Systemic Unfairness in the ICANN UDRP*, 27 BROOK. J. INT'L L. 903, 904–06 (2002).
[28] Laurence R. Helfer & Graeme B. Dinwoodie, *Designing Non-National Systems: The Case of the Uniform Domain Name Dispute Resolution Policy*, 43 WM. & MARY L. REV. 141, 146–50 (2001).

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less suited to a documentary, fixed-criteria procedure. Any adaptation of the UDRP model to copyright must preserve room for negotiation and contextual judgment.

C. Platform-based enforcement

The third model is the most widely used and least visible. In the United States, section 512 of the Copyright Act grants hosting services immunity from liability if they act expeditiously upon receiving a notice of claimed infringement and permits users to restore removed material by filing a counter-notification.[29] Many platforms have built far more extensive systems on top of this statutory framework. YouTube's Content ID allows approved rights holders to upload reference files, against which every new upload is compared. When a match is found, the rights holder's chosen policy is applied automatically: the video may be blocked, monetised for the benefit of the claimant, or simply tracked.

YouTube's own transparency data illustrate the degree of automation. Between July and December 2023, more than 1.008 billion Content ID claims (99.63%) were generated automatically, while approximately 3.7 million claims were made manually.[30] Only 0.42% of automated claims and 0.97% of manual claims were disputed by uploaders during that period.[31] However, when disputes were brought, they frequently succeeded: according to YouTube's report for 2024, more than 65% of disputed Content ID claims were resolved in favour of the uploader.[32]

These figures can be interpreted in different ways. A low dispute rate may indicate that the system is accurate. It may equally reflect the reluctance of ordinary users to challenge a large company, uncertainty about the law, or the fact that a monetised claim leaves the video online and thus seems not worth contesting. The high rate of success among disputes that are brought suggests that errors are not trivial. Research on notice-and-takedown practice conducted by Jennifer Urban, Joe Karaganis, and Brianna Schofield found a significant proportion of automated notices to be questionable, including notices targeting material that did not match the claimed work at all.[33]

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[29] 17 U.S.C. § 512(c), (g).

[30] *YouTube Copyright Transparency Report: Our Tools Are Cutting Edge*, GOOGLE TRANSPARENCY REP., https://transparencyreport.google.com/youtube-copyright/cutting-edge (last visited Nov. 14, 2026) (July–Dec. 2023 reporting period, Exhibits 3.1–3.2).

[31] *Id.*

[32] *YouTube Processed 2.2 Billion Content ID Copyright Claims in 2024*, TORRENTFREAK (May 22, 2025), https://torrentfreak.com/youtube-processed-2-2-billion-content-id-copyright-claims-in-2024-250522/.

[33] JENNIFER M. URBAN, JOE KARAGANIS & BRIANNA L. SCHOFIELD, NOTICE AND TAKEDOWN IN EVERYDAY PRACTICE 88–96 (U.C. Berkeley Pub. L. Rsch. Paper No. 2755628, rev. 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2755628.

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The courts have engaged with automation only indirectly. In *Lenz v. Universal Music Corp.*, the Ninth Circuit held that a copyright holder must consider whether a use is fair before sending a takedown notification.[34] The court added, without deciding the point, that the use of computer algorithms appeared to be a "valid and good faith middle ground" for processing large volumes of content while still considering fair use.[35] This remark has been influential, but it assumes that an algorithm can, in fact, take fair use into account, an assumption that the literature discussed above treats with considerable caution.

The deeper difficulty with platform enforcement is structural. Perel and Elkin-Koren have identified three accountability deficits in algorithmic copyright enforcement: inadequate transparency, inadequate due process, and inadequate public oversight.[36] The platform that operates the system is not a neutral party. It has commercial relationships with large rights holders, an interest in avoiding liability, and an incentive to resolve disputes cheaply. When a user disputes a Content ID claim, the claimant reviews the dispute in the first instance, which means that one party to the conflict is effectively the first judge of it. Martin Husovec has further shown that the move from "takedown" to "staydown" obligations, under which material must be prevented from reappearing, increases reliance on filtering and magnifies the consequences of error.[37]

D. Comparative assessment

Table 1 summarises the principal features of the discussed models.

Model	Nature of outcome	Role of technology	Human role	Main strength	Main weakness
WIPO mediation	Consensual settlement, enforceable as contract	Case administration, video hearings	Specialist mediator conducts process	High legitimacy; about 70% settlement	Limited capacity; cost for small claims
UDRP	Binding transfer or cancellation, subject to court action	Online filing and administration	Independent panel decides on documents	Global reach at high volume	Narrow scope; complainant-favouring concerns
Content ID	Automated claim: block, monetise or track	Matching decides whether a claim is made	Claimant reviews disputes first	Enormous scale and speed	Opacity; claimant acts as first judge

[34] *Lenz v. Universal Music Corp.*, 815 F.3d 1145, 1151 (9th Cir. 2016).
[35] *Id.* at 1154.
[36] Perel & Elkin-Koren, *supra* note 2, at 473–74.
[37] Martin Husovec, *The Promises of Algorithmic Copyright Enforcement: Takedown or Staydown? Which Is Superior? And Why?*, 42 COLUM. J.L. & ARTS 53, 58–60 (2018).

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Model	Nature of outcome	Role of technology	Human role	Main strength	Main weakness
Notice-and-takedown (DMCA s. 512; Rule 75, India)	Removal; restoration on counter-notice or lapse	Often automated notice generation	Intermediary acts; courts on escalation	Simple and quick	Binary outcome; no negotiated route

Table 1: Comparison of technology-enabled IP dispute resolution models. Source: compiled by the authors from the sources cited in Parts III and IV.

The comparison reveals a trade-off. Systems that rely heavily on human neutrals, such as WIPO mediation, enjoy high legitimacy but limited capacity. Systems that rely heavily on automation, such as Content ID, achieve enormous capacity but weak legitimacy because the decision maker is neither independent nor accountable. The UDRP occupies a middle position by narrowing the question asked. None of these models offers a process in which technology increases capacity while a neutral human retains responsibility for the conduct and fairness of the process. This is the space a hybrid model of algorithmic mediation would occupy.

IV. The Indian legal framework

A. Online copyright enforcement

The Copyright Act, 1957, as amended in 2012, provides a limited safe harbour for the transient or incidental storage of a work for the purpose of providing electronic links, access, or integration, subject to a proviso that comes into play when the rights holder complains about it.[38] The procedure is set out in Rule 75 of the Copyright Rules, 2013. The complaint must identify the work, establish the complainant's ownership, explain why the stored copy is infringing, and why no statutory exception applies, and include an undertaking to produce a court order within twenty-one days.[39] If satisfied, the intermediary must disable access within thirty-six hours, and access may be restored if no court order is produced within the twenty-one-day period.[40]

Intermediary liability is more generally governed by section 79 of the Information Technology Act, 2000. In *Myspace Inc. v. Super Cassettes Industries Ltd.*, a Division Bench of the Delhi High Court held that the safe harbour under section 79 is available in copyright cases, that an intermediary is liable only on actual knowledge of specific infringing material, and that a general obligation to pre-screen uploaded content would be impractical and harmful to free expression.[41] The Information Technology (Intermediary Guidelines and Digital Media Ethics

[38] The Copyright Act, 1957, § 52(1)(c), No. 14, Acts of Parliament, 1957 (India).
[39] The Copyright Rules, 2013, r. 75(2), Gazette of India, pt. II sec. 3(i) (Mar. 14, 2013).
[40] *Id.* r. 75(3), (5).
[41] *Myspace Inc. v. Super Cassettes Indus. Ltd.*, 2016 SCC OnLine Del 6382, ¶¶ 54, 62, 68 (India).

Code) Rules, 2021, add due diligence obligations, including the removal of unlawful content on receipt of a court order or government notification and the appointment of a grievance officer.[42] Amendments notified in February 2026 reduced the time for compliance with such orders from 36 hours to 3 hours and shortened the period for resolving user grievances from 15 days to 7 days.[43]

Two observations follow. First, the trend in Indian regulation is towards shorter deadlines, which in practice can only be met through automation. Second, none of these mechanisms provides for negotiated resolution. Under Rule 75, the dispute ends either with the restoration of access or with a court order. Under the IT Rules, the grievance officer decides, and the user may appeal. A user who has incorporated a portion of a work and would happily pay a licence fee, or a rights holder who would accept attribution and a share of revenue rather than removal, has no forum in which that outcome can be reached short of litigation.

B. Mediation, online mediation and commercial IP suits

The Mediation Act, 2023, provides a comprehensive statutory foundation for mediation for the first time.[44] Section 30 expressly recognises online mediation, including pre-litigation mediation, which may be conducted at any stage with the written consent of the parties, using electronic means that preserve confidentiality and the integrity of the process.[45] A mediated settlement agreement is final and binding and may be enforced in the same manner as a judgment or decree of a court.[46] The Act also establishes the Mediation Council of India, which is responsible for promoting mediation and setting standards for its practice.[47]

Intellectual property suits ordinarily qualify as commercial disputes under the Commercial Courts Act, 2015, and Section 12A of that Act requires a plaintiff who does not seek urgent interim relief to exhaust pre-institution mediation before filing a suit.[48] The Supreme Court has deemed this requirement to be mandatory.[49] In practice, however, rights holders in copyright cases almost invariably seek urgent interim injunctions, which take their suits outside section 12A. Even *ANI Media Pvt. Ltd. v. Open AI OpCo LLC*, discussed below, proceeded only after the court granted an exemption from pre-institution mediation because urgent interim relief was

[42] The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r. 3(1)(d), 3(2), Gazette of India, pt. II sec. 3(i) (Feb. 25, 2021).
[43] The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, G.S.R. 120(E) (Feb. 10, 2026) (India) (in force Feb. 20, 2026).
[44] The Mediation Act, 2023, No. 32, Acts of Parliament, 2023 (India).
[45] *Id.* § 30.
[46] *Id.* § 27.
[47] *Id.* § 31.
[48] The Commercial Courts Act, 2015, §§ 2(1)(c)(xvii), 12A, No. 4, Acts of Parliament, 2016 (India).
[49] *Patil Automation Pvt. Ltd. v. Rakheja Eng'rs Pvt. Ltd.*, (2022) 10 SCC 1 (India).

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sought.[50] The statutory framework for mediation thus exists, but the pathway by which copyright disputes would reach it is narrow.

C. Generative AI and the problem of scale

The ANI litigation illustrates why a mediated pathway is worth developing. A news agency sued the developer of a generative AI chatbot, alleging that its copyrighted news content had been used without permission to train large language models and was being reproduced in responses to users.[51] After hearings spread over more than a year, involving two *amici curiae* and several intervenors, the Delhi High Court declined to grant an interim injunction on July 24, 2026, and the suit continues on its merits.[52] Among the considerations noted by the court on the balance of convenience was that the plaintiff's claim was capable of being quantified in money, the plaintiff having earlier offered the defendant a licence.[53]

The substantive questions raised by the case are important and will be decided in due course. For present purposes, what is notable is that a dispute that had a commercial licensing dimension from the outset has required lengthy and expensive litigation. Similar claims by authors, publishers, music companies, and visual artists against AI developers are likely to multiply. Not every such claim requires an authoritative judicial ruling, and many concern the terms on which use may continue rather than whether it may continue at all. The WIPO Center's use of mediation to facilitate the licensing of large patent portfolios shows that mediation can handle complex, high-value licensing negotiations between sophisticated parties.[54] An AI-assisted process could extend this capacity to a larger number of smaller claims.

V. Regulatory benchmarks from the European Union

European legislation offers a useful point of comparison because it has addressed, in sequence, platform liability for copyright, procedural rights in content moderation, and the regulation of AI in dispute resolution.

Article 17 of the Directive on Copyright in the Digital Single Market makes online content-sharing service providers directly liable for content uploaded by users, unless they make best

[50] *ANI Media Pvt. Ltd. v. Open AI OpCo LLC*, CS(COMM) 1028/2024, I.A. 45303/2024, ¶ 3 (Del. HC Nov. 19, 2024) (India) (order granting exemption from pre-institution mediation).
[51] *ANI Media Pvt. Ltd. v. Open AI OpCo LLC*, CS(COMM) 1028/2024, I.A. 45300/2024 (Del. HC July 24, 2026) (India).
[52] *2026 WIPO IP Judges Forum Informal Case Summary – High Court of Delhi, India [2026]: ANI Media Pvt. Ltd. v. Open AI OpCo LLC*, WIPO Lex, https://www.wipo.int/wipolex/en/text/600755 (last visited Nov. 14, 2026); *ANI Media*, *supra* note 51, ¶¶ 28–29, 270–73.
[53] *ANI Media*, *supra* note 51, ¶ 265; *WIPO IP Judges Forum Informal Case Summary*, *supra* note 52.
[54] *WIPO ADR Highlights 2024*, *supra* note 15 (describing the use of WIPO mediation to facilitate the licensing of large telecommunications patent portfolios between standard essential patent holders and implementers).

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efforts to obtain authorisation and prevent the availability of works identified by rights holders.[55] The same article requires providers to put in place an effective and expeditious complaint and redress mechanism, under which decisions to disable access are subject to human review, and requires Member States to ensure that out-of-court redress mechanisms are available.[56] When Poland challenged Article 17 as incompatible with freedom of expression, the Court of Justice upheld the provision but emphasised that filtering systems unable to adequately distinguish between lawful and unlawful content would not be compatible with fundamental rights.[57]

The Digital Services Act generally extends these procedural ideas to content moderation. Online platforms must operate an internal complaint-handling system, and decisions on complaints must be made under the supervision of appropriately qualified staff and not solely by automated means.[58] Users are also entitled to take a dispute to a certified out-of-court dispute settlement body, which must be independent and impartial but has no power to impose binding settlements.[59] Such bodies are now operating; Ireland's media regulator certified the Appeals Centre Europe in September 2024.[60]

Finally, the Artificial Intelligence Act classifies as high-risk those AI systems intended to assist a judicial authority in researching and interpreting facts and law and applying the law to facts, "or to be used in a similar way in alternative dispute resolution."[61] The recitals clarify that this applies where the outcome of the ADR proceeding produces legal effects for the parties.[62] High-risk systems are subject to obligations concerning data governance, transparency, and human oversight, including design measures that allow the human overseer to understand the system's limitations, avoid over-reliance on its output, and disregard or override it.[63] Following the amendments adopted in 2026 under the so-called Digital Omnibus, the obligations for Annex III systems will apply from 2 December 2027.[64] The General Data Protection Regulation

[55] Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market, art. 17(4), 2019 O.J. (L 130) 92.
[56] *Id.* art. 17(9).
[57] Case C-401/19, *Poland v. Parliament & Council*, ECLI:EU:C:2022:297, ¶ 86 (Apr. 26, 2022).
[58] Regulation 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services, art. 20(6), 2022 O.J. (L 277) 1.
[59] *Id.* art. 21(1)–(3).
[60] COIMISIÚN NA MEÁN, *Information Note re the Decision to Certify the Appeals Centre Europe as an Out-of-Court Dispute Settlement Body Pursuant to Article 21 of the Digital Services Act* 3 (May 2025), https://www.cnam.ie/app/uploads/2025/05/ACE-Info-Note-final-version-English-for-website.pdf.
[61] Regulation 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence, annex III, ¶ 8(a), 2024 O.J. (L 1689) 1.
[62] *Id.* recital 61.
[63] *Id.* arts. 10, 13, 14(4).
[64] *See* Press Release, COUNCIL OF THE EUROPEAN UNION, *Artificial Intelligence: Council Gives Final Green Light to Simplify and Streamline Rules* (June 29, 2026).

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separately grants individuals a qualified right not to be subject to decisions based solely on automated processing that produce legal or similarly significant effects.[65]

Taken together, these instruments express three principles: automated decisions affecting users must be subject to human review; independent out-of-court bodies should be available as an alternative to both platform decision-making and litigation; and AI tools used in dispute resolution require heightened safeguards. India has elements of the first two principles in its intermediary rules and mediation legislation, but no framework connecting them, and no specific regulation of AI used in dispute resolution.

VI. Redefining neutrality in algorithmic mediation

A. Sources of algorithmic partiality

An algorithm may introduce partiality into a dispute resolution process in at least five ways. The first is through data. Machine-learning systems reproduce patterns found in their training data, and where that data reflects historical inequalities, the outputs will tend to reproduce them.[66] In copyright, reference databases are built from files supplied by rights holders, and any tool trained on past outcomes will learn from a history in which takedown was the default and few users contested claims.

The second source is the objective for which a system is optimised. A tool designed to maximise settlement rates or minimise processing time will favour outcomes that close cases quickly, which are not necessarily fair. Marc Galanter's classic analysis of "repeat players" explains why this matters: parties who use a system repeatedly can shape its rules and practices to their advantage over "one-shotters" who appear only once.[67] Large rights holders and platforms are paradigmatic repeat players; individual creators and users are typically one-shotters.

The third source is institutional. Whoever designs, funds, and operates the technology influences its behaviour. A tool supplied by a platform or a rights-holder association cannot be presumed neutral, however carefully the human mediator conducts the process. The fourth is opacity. Frank Pasquale has described how consequential decisions are increasingly made by systems whose logic is hidden from those affected,[68] and Danielle Keats Citron has argued that

[65] Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data, art. 22, 2016 O.J. (L 119) 1.
[66] Solon Barocas & Andrew D. Selbst, *Big Data's Disparate Impact*, 104 Calif. L. Rev. 671, 680–87 (2016).
[67] Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 Law & Soc'y Rev. 95, 97–104 (1974), https://doi.org/10.2307/3053023.
[68] Frank Pasquale, The Black Box Society: The Secret Algorithms That Control Money and Information 3–8 (2015).

automated decision-making can erode the notice and hearing that due process requires.[69] A party who cannot understand why a tool has produced a particular similarity score cannot meaningfully challenge it.

The fifth source lies in the human response to machines. Studies of automation bias show that people tend to accept automated recommendations even when contrary information is available to them.[70] A mediator who presents an algorithmic assessment, and parties who receive it, may treat it as more authoritative than it is. In mediation, where the parties' own assessment of their position drives settlement, this effect can determine the outcome, even though no one formally decides anything.

B. From personal impartiality to systemic neutrality

These risks suggest that neutrality in algorithmic mediation must be understood at three levels. The first is personal neutrality, the traditional requirement that the mediator have no interest in the outcome and treat the parties even-handedly. This remains necessary. The second is procedural neutrality, which requires that both parties have equal access to the tools used, receive the same outputs, and have equal opportunity to question them. A process in which only one party understands the technology, or in which one party has supplied the data on which the tool relies, is procedurally unequal, even if the mediator is personally impartial.

The third level, which this paper terms systemic neutrality, concerns the technology itself and the institution that deploys it. Systemic neutrality is satisfied when the tool's provider is independent of the parties, the data on which it relies are disclosed in general terms, its outputs are explained rather than merely reported, its performance is periodically audited for bias, and its role is clearly confined to support rather than decision. This understanding builds on Astor's account of neutrality as a set of practices directed at preserving party control.[71] Where technology is involved, those practices must extend beyond the conduct of the mediator to the architecture of the system. It also corresponds closely to the principles of transparency, accountability and due process identified in the UNCITRAL Technical Notes,[72] and to the human oversight requirements now found in European law.

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[69] Danielle Keats Citron, *Technological Due Process*, 85 WASH. U. L. REV. 1249, 1281–88 (2008).
[70] Linda J. Skitka, Kathleen L. Mosier & Mark Burdick, *Does Automation Bias Decision-Making?*, 51 INT'L J. HUM.-COMPUT. STUD. 991, 1004–05 (1999), https://doi.org/10.1006/ijhc.1999.0252.
[71] Astor, *supra* note 14, at 228–31.
[72] *UNCITRAL Technical Notes*, *supra* note 6, ¶ 4.

Redefined in this way, neutrality becomes something that can be designed, documented, and verified rather than merely asserted. This has a practical advantage. Parties who cannot observe the mediator's state of mind can at least examine whether the system meets defined standards.

VII. A PROPOSED HYBRID AI-ASSISTED MEDIATION MODEL

A. Design principles

The model proposed here rests on six principles. The first is consent: participation and the use of algorithmic tools within the process must be voluntary, consistent with the written consent required for online mediation under the Mediation Act. The second is human primacy: no binding or adverse determination is made by software, and the mediator retains control of the process at all stages. The third is symmetry: both parties receive the same analytical outputs at the same time. The fourth is explainability: every output is accompanied by an account of what it measures, how it was produced, and its limits. The fifth is proportionality: the depth of technological involvement should correspond to the complexity and value of the dispute. The sixth is confidentiality and data protection: information disclosed in mediation must be protected, and personal data processed in accordance with the Digital Personal Data Protection Act, 2023.[73]

B. Stages of the process

The model operates in five stages:

Stage 1: Intake and triage. Parties submit their claims and responses through structured online forms that capture the work concerned, the use complained of, the remedy sought, and any willingness to license or modify. A classification tool proposes one of three tracks: clear cases of wholesale piracy, which may be referred to existing takedown procedures; disputes concerning attribution, partial use, licensing, or revenue, which proceed to mediation; and disputes raising novel or significant questions of law, which are referred to adjudication. A human case manager confirms or alters the proposed track, and either party may object to the classification.

Stage 2: Evidence organisation and similarity analysis. When the dispute concerns the extent of copying, appropriate tools compare the works and produce a similarity report. The report identifies which elements correspond, indicates the confidence of each finding, and expressly states that it is not a determination of infringement. Facts relevant to statutory exceptions, such as the purpose of the use, the amount taken, and its effect on the market, are organised for

[73] The Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023 (India).

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discussion but not resolved. Both parties receive the report and may submit written comments on its accuracy.

Stage 3: Structured negotiation. The mediator, assisted by software, maps the issues and the parties' stated interests. The system may generate a range of options, including licences on specified terms, attribution, revenue sharing, modification of the work or removal, and may display comparable licensing rates where reliable data are available, with sources identified. Confidential tools may help each party clarify its own priorities without disclosing them to the other side. Throughout this stage, the mediator decides which outputs to introduce and how to frame them, guarding against the anchoring effect of automated suggestions.

Stage 4: Settlement and record. If the parties reach an agreement, the system prepares a draft settlement in a standard form. The mediator reviews it with the parties, who sign it electronically. A settlement concluded in this way would constitute a mediated settlement agreement enforceable under the Mediation Act, 2023.

Stage 5: Review and audit. Anonymised data on case types, outcomes, and processing times are retained and periodically audited by a body independent of the provider, with particular attention to whether outcomes differ systematically according to the type of party. Aggregate statistics are published.

C. Safeguards

Several safeguards apply across all stages. Either party may at any point request that the process continue without algorithmic support, and either may withdraw and pursue litigation, as the Mediation Act already permits. The tools used in a given case, and their providers, must be disclosed at the outset. The mediator must be trained not only in mediation but also in the capabilities and limitations of the tools. System logs must be kept so that a party who believes the process was unfair can obtain an account of how the technology was used, subject to the confidentiality of mediation communications. Where the model is operated in the European Union or for parties there, the classification of such tools under the AI Act and the human oversight duties it imposes would also have to be addressed.

D. Implementation in India

The model can be introduced in India through existing legal channels without new primary legislation. First, the twenty-one-day period under Rule 75 of the Copyright Rules can be used to offer the parties an optional referral to online mediation, so that the alternatives are no longer limited to restoration or a court order. Second, authorities and institutions conducting pre-institution mediation under section 12A of the Commercial Courts Act can adopt the model for

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IP disputes that do not involve urgent interim relief. Third, the Copyright Office can develop a co-administration arrangement with a specialised ADR institution, following the approach already used by WIPO with national offices. Fourth, the grievance mechanisms required under the IT Rules can be supplemented by referral to independent mediation providers, along the lines of the out-of-court bodies established under the Digital Services Act. In each case, standards for the use of AI tools in mediation can be developed by the Mediation Council of India as part of its function of laying down guidelines for mediators and mediation service providers.

E. Objections and limitations

Three objections deserve consideration. The first is that algorithmic mediation may legitimise the very platform power it seeks to check by giving an appearance of fairness to a process still shaped by repeat players. The insistence on systemic neutrality, and particularly on the independence of the tool provider and external audit, is intended to meet this concern, but it can only be met if those requirements are enforced. The second objection concerns access. Parties without reliable internet connectivity or digital literacy may be disadvantaged, a concern the NITI Aayog policy plan itself recognised.[74] Assisted access points and the option of a fully human process are therefore essential. The third objection is that some copyright disputes ought to be decided publicly, because they raise questions on which the law needs to develop. The triage stage of the model is designed to identify such cases and send them to adjudication. Mediation is a complement to the courts, not a substitute for them.

VIII. Conclusion

This study examined whether algorithmic tools can be integrated into the mediation of digital copyright disputes without undermining neutrality and what a hybrid model would require. The analysis of existing models shows a persistent trade-off between legitimacy and scale. WIPO mediation achieves high settlement rates and enjoys the confidence of users, but cannot handle mass disputes. The UDRP manages high volumes by narrowing the question it decides, an approach that suits domain names better than the contextual questions of copyright. Platform enforcement systems achieve enormous scale through automation, but concentrate enforcement and adjudication in the hands of interested parties and offer weak transparency and due process.

The Indian framework contains the necessary elements of a better approach, in particular statutory recognition of online mediation and enforceable mediated settlements under the Mediation Act, 2023; however, its copyright enforcement mechanisms remain binary and

[74] NITI Aayog Expert Comm. on ODR, *supra* note 7, at 60–61.

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increasingly time-pressured. By contrast, European law has begun to require human review of automated decisions, independent out-of-court redress, and heightened safeguards for AI used in dispute resolution.

The central argument of this paper is that neutrality must be redefined for algorithmic mediation. Personal impartiality of the mediator remains necessary but is no longer sufficient. Neutrality must also be procedural, ensuring that both parties have equal access to and understanding of the tools, and systemic, ensuring that the technology itself is independent, explained, and audited. On this basis, this paper has proposed a hybrid model in which software supports triage, evidence analysis, negotiation, and settlement drafting, while a human mediator directs the process and no outcome is imposed by an algorithm. AI can make copyright mediation faster, cheaper, and more widely available. Whether it also makes it fairer depends on the safeguards with which it is designed and governed.

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