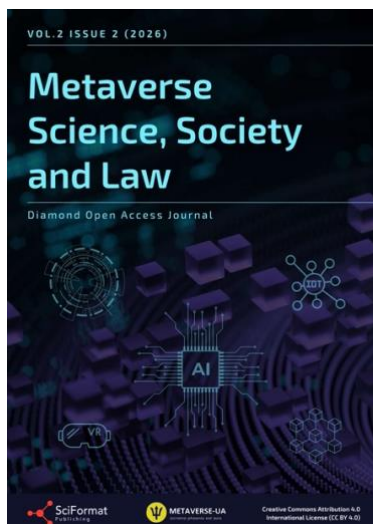




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LEGAL REGULATION OF MEDIATION IN THE AGE OF ARTIFICIAL INTELLIGENCE: A COMPARATIVE ANALYSIS OF UKRAINE AND THE UNITED STATES (2021–2026)

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ABSTRACT

This article presents a comparative analysis of the legal regulation of mediation in Ukraine and the United States between 2021 and 2026 in light of an emerging challenge: the use of artificial intelligence tools in mediation practice. The study applies the comparative legal method, doctrinal analysis of primary sources (the Law of Ukraine “On Mediation,” the Uniform Mediation Act, Regulation (EU) 2024/1689, and the institutional rules of ADR providers), and a critical review of the scholarly literature. The analysis shows that neither jurisdiction has adopted a binding rule defining the limits of a mediator's use of AI, disclosure duties toward the parties, or the allocation of responsibility for errors in AI-generated content. At the same time, the article develops the author's position that the very nature of mediation calls into question the need for strict statutory regulation of AI in this field. A mediator renders no decision; legal force attaches to the parties' settlement agreement, and state enforcement secures that agreement rather than any act of the neutral. This reasoning finds support in EU law: under Recital 61 of Regulation (EU) 2024/1689 and the European Commission's draft guidelines of May 19, 2026, the high-risk classification of AI systems in ADR turns on whether the outcome of the procedure produces legal effects for the parties. The article proposes a differentiated approach: instead of regulating the technology, the proper object of regulation is the mediator's personal responsibility for verifying AI-generated content, with possible exceptions for particular categories of disputes.

KEYWORDS

Artificial Intelligence; Mediation; Alternative Dispute Resolution; Comparative Law; Law of Ukraine “On Mediation”; Uniform Mediation Act; EU Artificial Intelligence Act; Mediator Responsibility; Mediated Settlement Agreement; Ukraine; United States

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1. Introduction

Modern artificial intelligence systems can analyze a substantial volume of the parties' documents within a short time, model likely points of compromise, and prepare a draft settlement agreement. Consider a mediator who uses such a tool in a commercial dispute. Neither Ukrainian nor United States law answers three basic questions: whether the mediator must disclose the use of AI to the parties; who bears responsibility for an erroneous analysis generated by the system; and whether delegating an analytical function to an algorithm is compatible with the status of a neutral.

The scholarly literature on the legal regulation of AI in the legal profession has focused primarily on the work of attorneys in litigation: the duty of technological competence, the risk of so-called hallucinations, and disciplinary liability. The role of the mediator has received far less attention, although that role is fundamentally different: a mediator does not represent a party's interests but safeguards a neutral and confidential process. This article addresses that gap.

The research question is twofold. First, does the absence of AI-specific regulation of mediation create a risk of the same character in both jurisdictions? Second—and this is the article's central question—does the use of AI in mediation require strict state regulation at all, given the voluntary, contractual nature of the procedure?

The article proceeds as follows: Section 2 sets out the methodology; Section 3 analyzes the regulation of mediation and AI in the United States; Section 4 turns to Ukraine; Section 5 offers a comparative analysis; Section 6 addresses whether state regulation of AI in mediation is necessary; Section 7 presents conclusions and *de lege ferenda* proposals.

2. Methodology

The comparative legal method serves as the principal method of the study, supplemented by doctrinal analysis of the statutes in force and of the institutional rules of ADR providers (JAMS, SVAMC). The temporal scope runs from the adoption of the Law of Ukraine “On Mediation” in November 2021 through July 2026. The study has several limitations: it does not separately examine mediation in criminal proceedings; it does not cover the regulation of all fifty U.S. states; and the JAMS and SVAMC instruments primarily concern arbitration and are applied to mediation by analogy, as expressly noted in the relevant sections.

3. Regulation of Mediation and Artificial Intelligence in the United States

3.1. A Fragmented Regulatory Framework

No single statutory definition of mediation exists in the United States, but the Uniform Mediation Act supplies a functional one: mediation is a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute (UMA § 2(1)). Two elements are decisive: the mediator merely facilitates negotiation, and the outcome is a voluntary agreement of the parties themselves.

Mediation in the United States is not governed by a single federal act. The Uniform Mediation Act (UMA), drafted in 2001 by the National Conference of Commissioners on Uniform State Laws together with the American Bar Association's Section of Dispute Resolution, has been enacted, as of 2026, in thirteen states and the District of Columbia; Connecticut became the thirteenth state when its act took effect on October 1, 2025. States outside the UMA often maintain mediation confidentiality statutes of their own—Florida, for example, has enacted the Mediation Confidentiality and Privilege Act (Fla. Stat. §§ 44.401–44.406), in which § 44.405 establishes the confidentiality of and privilege for mediation communications while § 44.406 provides civil remedies for their breach—but the substance and scope of protection vary from state to state. At the federal level, no mediation privilege is codified in Federal Rule of Evidence 501, and each federal district court follows its own ADR rules. The picture is therefore one of fragmentation rather than absence of regulation: the basic question of the confidentiality of mediation communications is answered differently depending on the jurisdiction.

3.2. Professional Standards and ABA Formal Opinion 512

ABA Formal Opinion 512 (2024) addresses the duties of attorneys using generative AI. Its principles—competence (Model Rule 1.1) and confidentiality (Model Rule 1.6)—apply by analogy to mediators, who are frequently practicing attorneys. The Model Rules of Professional Conduct, however, do not govern a person acting specifically in the role of a neutral rather than as a party's representative. That is a distinct gap that Opinion 512 does not close.

3.3. Case Law: The Consequences of Careless AI Use

U.S. case law from 2023 and 2024 follows a consistent line: courts sanction attorneys for filing documents containing fabricated AI-generated citations. In *Mata v. Avianca, Inc.*, the court imposed sanctions on attorneys for citing fictitious judicial decisions produced by ChatGPT. In *Park v. Kim*, the Court of Appeals for the Second Circuit referred an attorney to the court's grievance panel for citing a nonexistent decision in an appellate brief, characterizing reliance on fabricated authority as an abuse of the adversary system. Both cases concern courtroom advocacy, not mediation—which itself confirms the article's thesis: the courts have not yet articulated a comparable standard for neutrals in out-of-court dispute resolution.

3.4. The Institutional Response: JAMS and SVAMC

The position of JAMS, one of the leading ADR providers in the United States, is telling. In June 2024, JAMS introduced its Artificial Intelligence Disputes Clause and Rules—specialized arbitration rules for disputes arising out of the development or use of AI systems. The drafters expressly defined the rules' reach: they govern disputes about AI, not the neutral's own use of AI in resolving a dispute; for the latter, JAMS developed separate internal guidelines that have not been made public. A leading institutional actor thus acknowledges the problem while addressing it through closed documents unavailable to the parties and to the scholarly community.

In April 2024, the Silicon Valley Arbitration and Mediation Center published its Guidelines on the Use of Artificial Intelligence in Arbitration—non-binding recommendations addressing the use of AI by all participants in arbitral proceedings. Although the document formally concerns arbitration, its core principles—disclosure of AI use, verification of generated content, and preservation of confidentiality—lend themselves to application by analogy in mediation.

4. Regulation of Mediation and Artificial Intelligence in Ukraine

4.1. The Law of Ukraine “On Mediation”: A Comprehensive Model

In contrast to the fragmented American approach, Ukraine—after more than a decade of legislative work—adopted a single Law “On Mediation,” No. 1875-IX, on November 16, 2021. Article 1 of the Law defines mediation as an extrajudicial, voluntary, confidential, structured procedure in which the parties, with the assistance of a mediator (or mediators), attempt to prevent or resolve a conflict (dispute) through negotiation. Despite their different legal traditions, the Ukrainian and American definitions converge on the essential point: the mediator helps the parties negotiate but does not decide the dispute for them. The Law enshrines the principles of voluntariness, confidentiality, neutrality, independence, and impartiality of the mediator. The Law's final provisions amended the Commercial Procedure Code, the Civil Procedure Code, and the Code of Administrative Procedure of Ukraine to allow a court to declare a recess or stay proceedings at the request of parties who have chosen mediation.

For the purposes of this study, the structural advantage of such a model is decisive: a single statute means that any AI-related supplement—even in the form of a subordinate act or a professional ethics standard—takes effect simultaneously throughout the country, without the coordination across dozens of separate jurisdictions that is unavoidable in the United States.

4.2. The Absence of AI Provisions: Analyzing the Gap

The Law “On Mediation,” adopted before the mass diffusion of generative AI, contains no provisions on a mediator's use of artificial intelligence technologies. This is not a distinctly Ukrainian feature: the same gap exists in U.S. law and in the EU Artificial Intelligence Act (Regulation (EU) 2024/1689), which contains no specific provisions on the neutrality of a third party in mediation. Wartime conditions, however, give the gap a practical dimension: the growing burden on the court system and the rising number of property and family disputes connected with population displacement increase demand for effective online mediation mechanisms—precisely the procedures in which the risk of algorithmic bias is highest.

4.3. Professional Standards for Mediators

The requirements for mediators in Ukraine are minimal. Under Article 9 of the Law, a mediator may be any natural person who has completed basic mediator training in Ukraine or abroad; the only restrictions concern criminal record and legal capacity. Article 10 sets the scope of basic training at no fewer than 90 hours of instruction, including at least 45 hours of practical training. The Law requires neither a legal education nor higher education of any kind. The position in the United States is similar: in most states a mediator need not

be an attorney, and training requirements vary by state and by category of dispute (heightened requirements are typical, in particular, for court-referred mediation). This circumstance matters for the analysis that follows: if the legislature deliberately declines to require legal qualifications of the mediator, it is consistent to conclude that the legislature likewise does not regard the analytical tools the mediator uses as subject to a separate authorization regime.

Ukraine also has a Code of Professional Ethics of the Mediator, approved by the General Assembly of the NGO “National Association of Mediators of Ukraine” (NAMU) on February 19, 2022 (Minutes No. 1/2022). Tellingly, the Code already responds in part to digitalization: paragraph 2.9 extends the basic principles of professional ethics to all forms of a mediator's activity, including activity conducted with technical and/or software means of digital communication, and paragraph 2.7 enshrines the principle of responsible maintenance of an appropriate level of professional competence. The Code, however, reaches only communication tools—the 2022 revision responded to the growth of online mediation—and does not cover analytical or generative artificial intelligence tools. The Rules of Attorney Ethics, for their part, do not extend to mediators who are not attorneys. Even the limited analogy available in the American system (applying attorney standards to attorney-mediators) is therefore narrower still in the Ukrainian system. At the same time, Article 15 of the Law establishes the mediator's civil liability for breach of obligations under the mediation agreement—a contractual mechanism that, as shown below, provides a sufficient basis for liability for improper use of AI as well.

5. Comparative Analysis

The results of the comparison are summarized in Table 1.

Table 1. Regulation of Mediation and AI: The United States and Ukraine (as of July 2026)

Criterion	United States	Ukraine
Basic mediation statute	No single federal statute; the Uniform Mediation Act has been enacted in 13 states and the District of Columbia (as of 2026)	Single Law of Ukraine “On Mediation” No. 1875-IX (2021), applicable nationwide
Confidentiality of mediation	Fragmented: UMA states; states with statutes of their own (e.g., Fla. Stat. §§ 44.401–44.406); no federal mediation privilege under Fed. R. Evid. 501	Uniform statutory confidentiality rule
AI-specific regulation of mediation	None at the statutory level; institutional rules of ADR providers exist (JAMS AI Rules, 2024) alongside the SVAMC Guidelines (2024)	None at any level
Position of leading ADR institutions on a neutral's own use of AI	The problem is acknowledged but addressed through non-public internal documents (JAMS)	No comparable national institutions; the NAMU Code of Professional Ethics of the Mediator (2022) is in force but does not address AI
Case law on AI errors	Established as to courtroom advocacy (Mata v. Avianca, 2023; Park v. Kim, 2024); none as to mediators	None
Potential speed of closing the gap	Slow: requires interstate coordination or a federal initiative	Potentially fast: a single statutory amendment, subordinate act, or amendment to the NAMU Code of Ethics would suffice

The comparison supports two conclusions. First, Ukraine's structural advantage—a single statute—remains unrealized for now, because the AI gap exists in both systems to the same degree. Second, the American advantage—institutional acknowledgment of the problem by JAMS—is limited: a provider's internal documents are not rules of law and are subject to neither independent scholarly nor judicial scrutiny.

6. Does the Use of AI in Mediation Require State Regulation?

The answer lies in the legal nature of the outcome of mediation. A mediator—unlike a judge or an arbitrator—renders no decision. Legal force attaches to the mediated settlement agreement, which the parties themselves conclude; the mediator is not a party to it and holds no adjudicative authority. State coercion is available in this structure, but it enforces the parties' contract rather than any act of the neutral: in Ukraine, a mediated settlement agreement is enforced under the general rules of the law of obligations and, if approved by a court as an amicable settlement, acquires a mechanism of compulsory enforcement; in the United States, a mediated settlement agreement is a contract protected through an action for its breach or through incorporation into a consent judgment. The source of binding force is thus the will of the parties, not the mediator's authority—and this is precisely what distinguishes mediation from arbitration, where the arbitrator's award is binding of its own force.

This distinction carries direct regulatory significance, and EU law has recently formalized it. Point 8(a) of Annex III to Regulation (EU) 2024/1689 classifies as high-risk those AI systems intended to assist a judicial authority in researching and interpreting facts and the law, or to be used in a similar manner in alternative dispute resolution. Recital 61 of the Regulation refines the criterion: AI systems used by ADR bodies are considered high-risk when the outcomes of the proceedings produce legal effects for the parties. The European Commission's draft guidelines on the classification of high-risk systems, published on May 19, 2026, develop this approach: mediation is expressly named among the examples of ADR (paragraph 426), and the high-risk classification is made contingent on whether the outcome of the procedure produces legal effects (paragraphs 430–431).

Applying this criterion to mediation and to arbitration yields opposite results. An arbitral award binds the parties of its own force—an AI system used by an arbitrator in the manner contemplated by the Regulation falls within the high-risk category. The outcome of mediation produces no legal effects by itself: the effects are created by a contract that the parties remain free to conclude or not to conclude. There are accordingly strong grounds to conclude that a mediator's AI tool in a typical voluntary mediation falls outside the high-risk category—and that differentiation by the legal force of the outcome is built into the logic of the most stringent AI regulatory model in force today.

The conclusion that strict statutory regulation is inadvisable also aligns with the broader doctrinal debate. Analyzing the AI legislation in force and in draft in the United States, the European Union, and the People's Republic of China, O. Kostenko shows that even the most ambitious of these instruments suffer from systemic defects—from vague and inconsistent definitions of basic concepts to fragmented ethical requirements—and on that basis argues for an adaptive, ethics-oriented model of regulation in place of rigid statutory constructions (Kostenko, 2025). For mediation, that conclusion carries particular weight: a field in which the legislature has reduced even the qualification requirements for the mediator to a minimum is hardly a suitable proving ground for anticipatory statutory regulation of technology. Self-regulation through codes of professional ethics, by contrast, accords both with the logic of Law No. 1875-IX itself—Article 13 of which expressly assigns the development of codes of professional ethics to associations of mediators—and with the adaptive model proposed in the literature.

The author's position follows. Strict state regulation of AI use in mediation—on the model of an authorization regime or system certification—is neither necessary nor proportionate. The proper object of regulation is not the technology but the responsibility of the mediator as a human being: the duty to verify personally any system-generated analysis or draft agreement before presenting it to the parties, and the duty to disclose to the parties the fact of AI use. Functionally, this is the same model that the American courts applied to attorneys in *Mata v. Avianca* and *Park v. Kim*: responsibility for AI-generated content rests with the human who signed it—not with the system's developer and not with the system itself. For mediators in Ukraine, the contractual basis for such responsibility already exists in Article 15 of the Law “On Mediation”; what is missing is only an ethical standard giving concrete form to the duties of verification and disclosure.

This position requires two caveats. First, a differentiated approach means that heightened requirements are justified for particular categories of mediation: court-referred mediation integrated into judicial proceedings, family disputes involving children, and disputes marked by an evident inequality of bargaining power. In those categories, the consequences of deficient AI analysis fall on a vulnerable party who is not always able to evaluate it critically—and it is there that regulation at the level of the jurisdiction, the state, or the category of dispute is appropriate. Second, the voluntariness of the outcome does not eliminate the risk of informational influence: if an AI-generated forecast of the parties' litigation prospects distorts a party's understanding of its alternatives, freedom of contract becomes formal. The answer to that risk, again, is not a prohibition of the technology but duties of disclosure and human verification.

7. Conclusions and De Lege Ferenda Proposals

As of mid-2026, neither jurisdiction examined here has a binding rule defining the permissible limits of a mediator's use of AI. The answer to the first part of the research question is that the gap is identical in character, but the paths to closing it differ structurally, and Ukraine's single-statute model allows faster action. The answer to the second, central part is that the gap itself does not call for closure through strict state regulation. Because the mediator renders no decision and legal force attaches to the parties' agreement, the legal-effects criterion—the same criterion applied by Recital 61 of Regulation (EU) 2024/1689—places typical voluntary mediation outside the high-risk category. The proper object of regulation is the human mediator's responsibility for verification and disclosure, not the technology itself; the need for heightened requirements is determined by the category of dispute and the jurisdiction, not by the fact of AI use as such.

Proposals for Ukraine: rather than amending the Law “On Mediation,” a sufficient and proportionate first step is to develop the NAMU Code of Professional Ethics of the Mediator (2022), which already contains the necessary anchor points. Paragraph 2.9 of the Code, which extends the ethical principles to activity conducted with software means of digital communication, should be supplemented with an express reference to analytical and generative artificial intelligence systems, and paragraph 2.7 (professional competence) with duties of personal verification of generated content and of disclosure to the parties of the fact of AI use—by functional analogy with ABA Formal Opinion 512, adapted to the continental tradition. The mediator's contractual liability under Article 15 of the Law already provides the parties with a protective mechanism.

Proposals for the United States: given the difficulty of federal unification, the most realistic step is publication of institutional standards—including those JAMS has already developed for internal use—together with differentiation of requirements by category of dispute at the level of court rules governing court-referred mediation, where heightened standards are justified.

A promising direction for further research is an empirical analysis of how mediators in both countries actually use AI tools in practice—a question the scholarly literature has yet to answer.

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