# Kluwer Mediation Blog

## Mediating by Skype!

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One of the many challenging aspects of mediating cross border cases is the fact that by definition, the parties tend to be in separate countries (and often the mediators too). One way of getting over this hurdle is by using one of the many information and communication technologies there are available these days. This month, I want to share my experience of using just one of these –Skype.

There are numerous different online mediation platforms in use these days, and even more in development. Different approaches are taken for different types of cases and a growing body of research is emerging around the effectiveness of using online platforms for mediation. In my family mediation practice, I mainly use an asynchronous text-based mediation platform, Juripax, which I have written about in the past, combined with phone or one-party Skype calls, or other web-conferencing platforms. I have also trialled a number of other systems. I have yet to really settle on one "ideal" platform but tend to pick and choose as the need arises. I was therefore interested when, some time ago, I became aware of a Pilot Project known as the Virtual Mediation Lab, set up and run by Giuseppe Leone, an Hawaii based mediator.

The aim of his project is to demonstrate the efficacy of, and promote, online mediation, and to offer mediators and others who are interested the opportunity to try their hand at, or indeed train in online mediation using Skype. The project has also moved into mobile mediation, that is, mediating by Skype on mobile devices such as iPhones and iPads recently. Last month, therefore, Giuseppe and I agreed to run a simulation of a child abduction mediation to be put up on his website to show how online mediation can work in such cases. These cases, which I have written about at length before, are ideal for online mediation due to the fact that parties are almost always located in different countries after the conflict erupts, and often have limited means to travel for the purposes of mediation. In addition to this, the tight time limits of legal proceedings that often arise out of a parental child abduction can make organising a face to face venue that the parties, their representatives and, ideally, two mediators can travel to quite challenging.

In our simulation, the parties included a "husband" from the US, an Irish "wife" (both colleagues of mine), myself and an American co-mediator, in accordance with best practice in such cases, and of course our technological manager, Giuseppe. More complicated than any aspect of the actual mediation was trying to organise a time when we were all available in our respective time zones – Hawaii, Texas, Ireland and Germany – but eventually we agreed on a time and date. The place, of course, thanks to the technology, was our own offices / sitting rooms and, in my case, the apartment we were holidaying in in Berlin.

When the time came, after a few minor technological teething problems, rapidly sorted out by Guiseppe, myself, my co-mediator and our two virtual clients could all see each other on screen and hear each other. I should point out, at this stage, that myself and my co-mediator had chatted beforehand to discuss our strategy, and also that both parties had been briefed as it was a simulation.

We started by greeting the parties and immediately one feature of having four people on Skype simultaneously became apparent – everyone has to speak a little more slowly than usual, and if people interrupt each other, the message gets lost even more quickly than it does in face to face settings. Some ground rules in relation to communication had to be set therefore. In fact, this aspect was interesting as, and I have generally found this with online mediation, just slowing down the exchanges a little and ensuring everyone has time to speak can relax people a little, particularly when they are angry and have a lot to say. Everyone was given ample opportunity to hear each other and as co-mediators we found it quite easy to leave each other space also.

One of the many questions that is asked about online mediation is how emotions are recognised, acknowledged and managed when one isn't in the same room as the parties. Using multi-party Skype, because you can see everyone's faces, this was not a problem. Facial expressions, tone of voice, gestures, and even some aspects of body language were easily recognisable, and we both had the time and space to acknowledge this and feed back the emotions we were observing in one party to the other, where appropriate. Perhaps it was necessary for the mediators to acknowledge emotions a little more vocally, where, in a face to face situation, a nod or more subtle gesture might have been sufficient, but the online platform did not in any way hinder the expression or recognition of emotions. It is also interesting to note that in one of the studies available on which forms of ICT are most suitable for online mediation, carried out by British Colombia's Distance Mediation Project it was found that the mediators found the most effective tools were those using multi point video, where all parties could be seen on screen simultaneously, such as in our simulation. Very importantly, the platform allowed us also to switch seamlessly to caucus with individual parties, and then back to joint sessions, so if we as mediators felt the parties needed extra input or some time with us "alone" that could be easily done.

Something which is important to remember in an online mediation such as this is that the mediator(s) must ensure, as well as possible, that the parties are on their own where they are and that no one else, particularly eg children, is listening in to the mediation. While this will be built into a section of the Agreement to Mediate, which will require some tailoring to the online milieu, it is still important to check and agree this with the parties at the start of every session.

Due to the time constraints of running a simulation, we only scratched the surface of the case, so did not get on the stages of formulating and drafting agreement, the latter of which might necessitate the deployment of some additional software, but I would urge anyone interested in online mediation, particularly those who may have been put off by the perceived necessity for complex platforms or a high level of It skills, to look at this, and some of the other simulations the Virtual Mediation Lab have carried on. All are available on their website.

The one main issue that can arise has less to do with the platform itself than with the technology surrounding it. In order for multi-party Skype to work effectively both the internet speed and your computer or tablet's capacity have to be up to scratch, or connection breakdowns, disjointed video and audio and interference will make the experience uncomfortable and frustrating. This will be an issue for people in some parts of the world but should, if I can take heart from the trench being

drilled outside the window of my office in the West of Ireland to accommodate new eFibre connectivity, looks set to improve in the coming years.

I will certainly be continuing to use Skype for both pre-mediation and mediation, on its own and in conjunction with other platforms, whenever suitable and I will await the outcomes of the Virtual Mediation Lab's continuing research with interest.

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