

Best Practices for the Use of Artificial Intelligence and Other Technology in Mediation

NOTE: This Guide was designed as a quick reference for mediators when using technology before, during, or after a mediation session. It is not a comprehensive document, and other resources should be consulted (*see below*).

SELF-DETERMINATION

BEST PRACTICE

- ✓ Disclose the use of technology & obtain all parties' informed consent.
- ✓ Allow parties to opt out of mediation if they are uncomfortable with any use of technology.

AVOID

- ✗ Concealing or misleading parties about the types & purpose of technology being used.

COMPETENCE

BEST PRACTICE

- ✓ Be knowledgeable about & able to explain the technology utilized.
- ✓ Be prepared to troubleshoot common technical issues that may arise.

AVOID

- ✗ Using technology if you are not familiar with its main functions & features.
- ✗ Using technology without knowing the source of the data & where newly-generated data goes.

CONFIDENTIALITY AND SECURITY

BEST PRACTICE

- ✓ Take steps to protect sensitive & identifying info. & party communications; explain these steps to all parties.
- ✓ Ensure technology includes security protocols to safeguard data & info.
- ✓ Promptly disclose any security breaches that threaten confidentiality protections.

AVOID

- ✗ Entering confidential info. into tools that store such data in ways that contradict party expectations or applicable law.
- ✗ Copying confidential info. into public AI systems without knowing how the data is stored or used.
- ✗ Assuming any technology guarantees privacy.

ACCESSIBILITY

BEST PRACTICE

- ✓ Use technology that makes mediation more accessible to parties.
- ✓ Ensure technology is readily available & easy to use for all parties.

AVOID

- ✗ Using technology that excludes or limits participation by any party, or gives one party an advantage.
- ✗ Using technology if any party is uncomfortable or unskilled in using it.

ACCOUNTABILITY AND LEGALITY

BEST PRACTICE

- ✓ Ensure technology complies with applicable mediation standards & guidelines.
- ✓ Ensure compliance with laws & regulations applicable to the technology itself.

AVOID

- ✗ Using technology without first researching the laws & regulations that govern it.

TRANSPARENCY

BEST PRACTICE

- ✓ Disclose in advance any technology you have used to prepare, or plan to use during or after the session, that may impact the process in a substantive way.
- ✓ Establish clear ground rules for using technology that apply to the mediator & the parties.
- ✓ Convey the limitations & risks of the technology.

AVOID

- ✗ Recording or transcribing, or allowing others to do so, without the consent of all participants.
- ✗ Ignoring the possibility that a party is using AI or other technology without the knowledge of all participants.

OTHER MEDIATOR RESPONSIBILITIES

BEST PRACTICE

- ✓ Carefully review any technology-generated content for accuracy, clarity & completeness.
- ✓ Guard against bias that may exist in AI and other technological tools.

AVOID

- ✗ Relying on AI or other technology outputs without critically reviewing them first.
- ✗ Assuming technology outputs are neutral or objective.
- ✗ Ignoring the importance of human interaction in the mediation process.

What Do You Need to Know About AI & Security: Questions to Ask

Understanding the ever-evolving world of Artificial Intelligence (AI) and the ethical requirements about how/if/when it can be used in one's mediation practice can be puzzling and overwhelming.

For instance, how do you find the security and privacy settings for the AI bot you might want to use? Here is some information that can be helpful.

Generally, as a mediator, you may want to use a basic AI bot like Open AI's ChatGPT or Anthropic's Claude. Or you may choose to use one of the many "bespoke" platforms made specifically for mediation. ("Bespoke" platforms are tailor-made systems designed from the ground up to meet the very specific needs of a particular organization or business.) Be aware that bespoke platforms may use general AI as a base, so there is some crossover.

The primary questions you probably want to ask are related to confidentiality, security, and privacy. Although this may seem like a daunting task, there are some straightforward steps that may help when trying to weigh whether to use specific platforms.

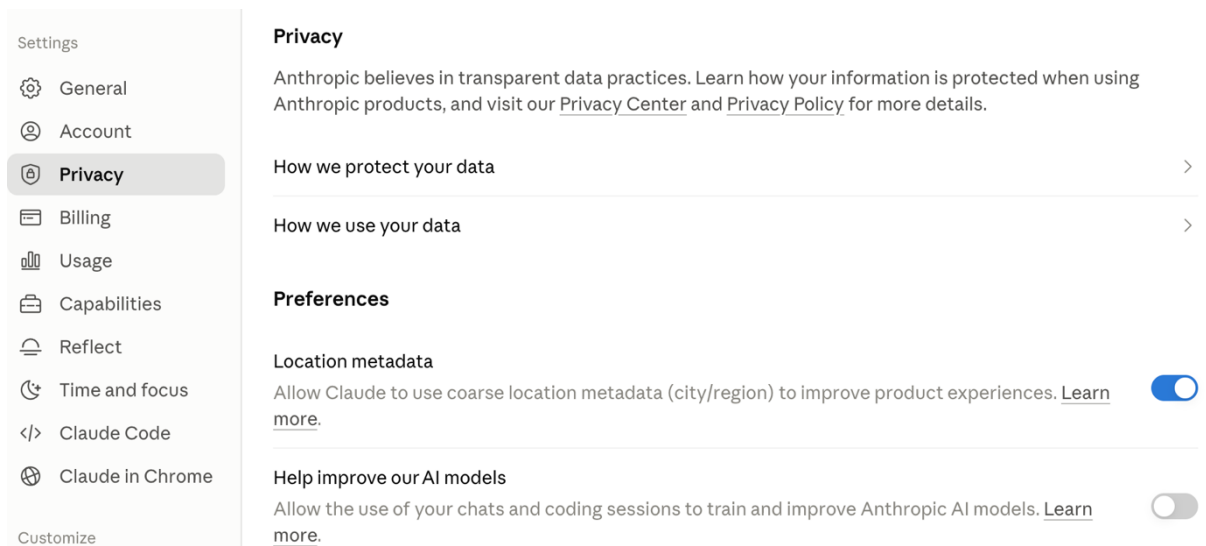
It is possible to drill down to some very technical questions, but the basic things you probably want to know are:

- how does the platform guard party privacy;
- where is the information we share stored;
- how long is the information kept;
- how (if at all) is it destroyed when we are done;
- what are the encryption standards, and;
- does my data get added to the data set from which this platform "learns"

The most reliable approach is to go directly to primary sources. Usually in the "settings" tab for general AI platforms, or in some easily recognizable place on the screen, you will be able to access information about these questions. For the general AI bots, you can also just ask them what are their privacy and security protocols.

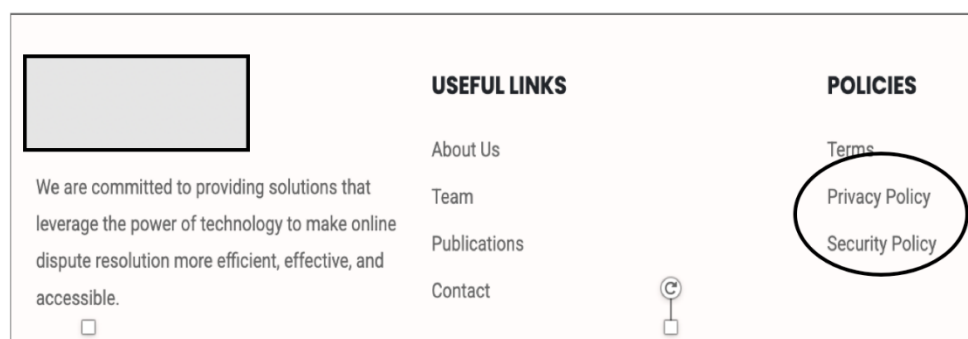
Here's a screenshot of a small part of the privacy information for Claude.

Claude's settings page.



For bespoke (custom-designed) AI, there is also usually a section, probably found at the bottom of the home screen, that details the platform's policy on privacy, data sharing, data retention, encryption, etc. **If there is no statement about any of this, that's probably a platform to use with caution, if at all.**

Here's an example screen shot from a bespoke (custom-designed) AI platform showing how to access their privacy and security information.



If you can't find links like this on a platform you might want to use, you can usually use the "contact us" function to ask direct questions. **Again, if you can't find information like this anywhere, it might be best to think twice about using the platform.**

Additional Resources

Still have questions, or want to learn more, about using technology in mediation? Check out these additional resources:

[Additional Resources](#)