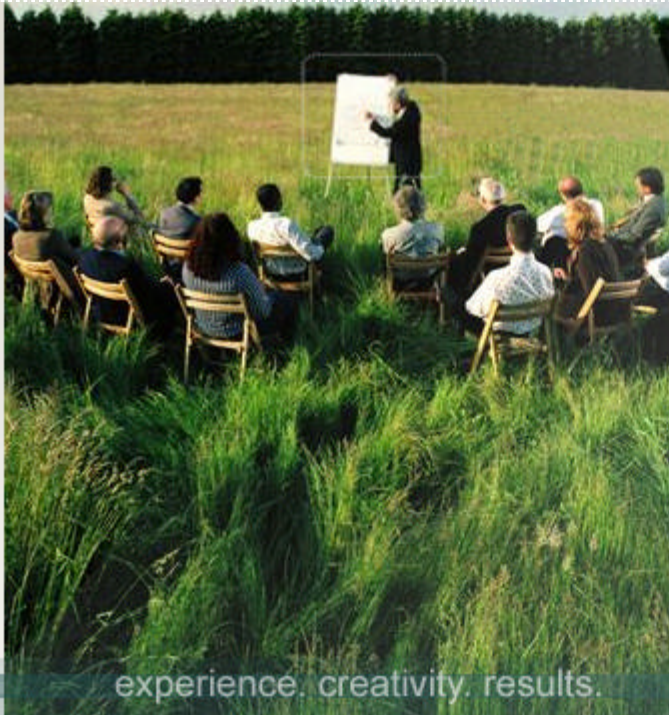


*Increase the effectiveness of mediation  
in an IP dispute*

*How well can we prepare our parties to be ?*



Flip Petillion  
Partner

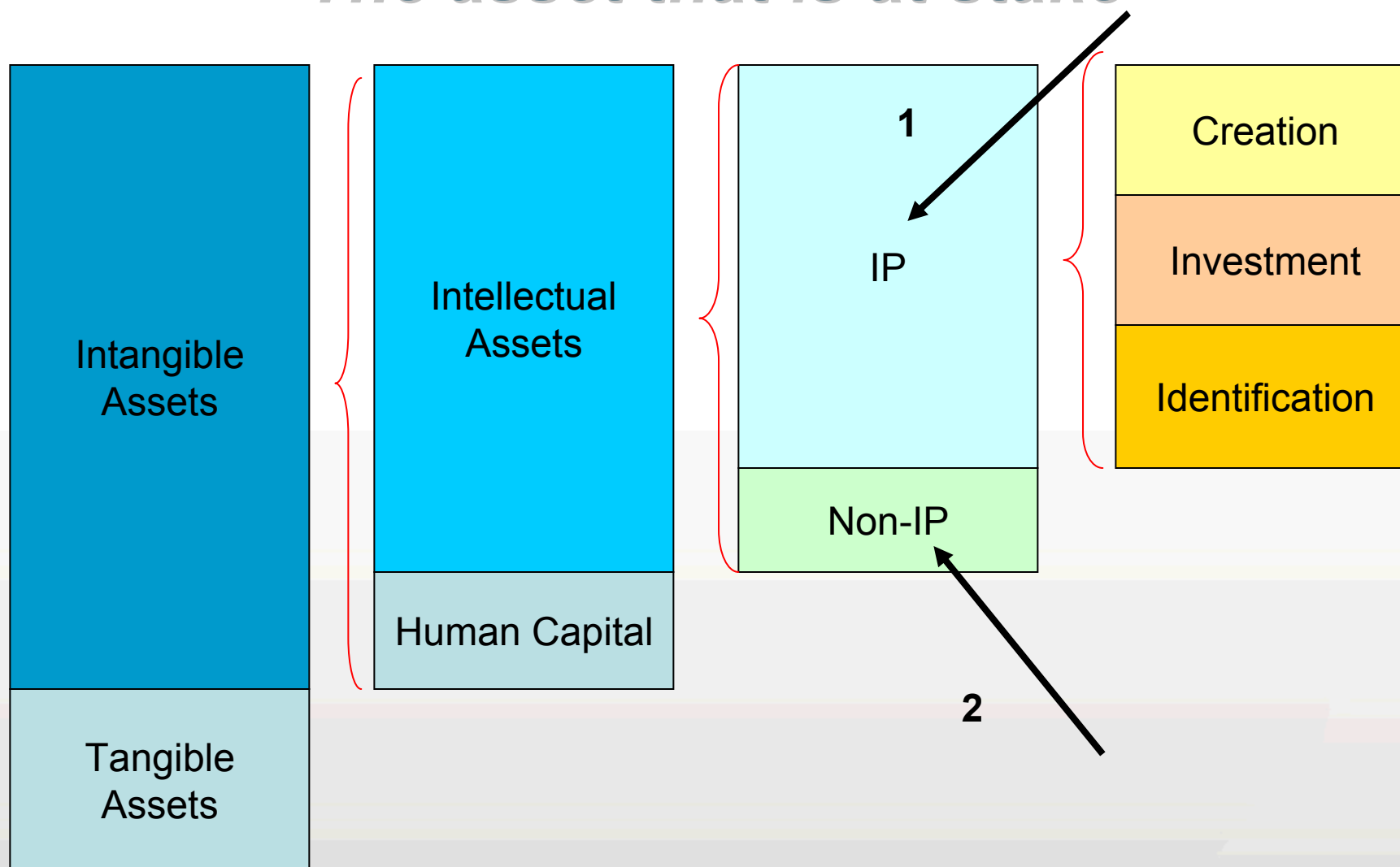
INTA – 17 May 2009

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## *First : Understanding the dispute*

- What is the asset that is at stake and what is its value?
- What are the alternatives to solve the problem?
- What was undertaken so far?

## *The asset that is at stake*



## *Put mediation into the right perspective*

- A voluntary non-binding process in which the parties make decisions together based on their understanding of their own views, the views of the other and the reality they face.
- The mediator works as a non-coercive neutral to help the parties negotiate an enforceable agreement that serves them better than their alternatives.

## *Typical*

- Confidential
- Non-binding
- Interest-based
- Preserve relationships
- Effective in several situations or sectors:
  - patent, know how and trademark licenses, franchises, computer contracts, multimedia contracts, distribution contracts, joint ventures, research and development contracts, technology-sensitive employment contracts, mergers and acquisitions where intellectual property assets assume importance, sports marketing agreements, and publishing, music and film contracts

## *Advantages*

- Single procedure
- Can be used at any stage of a dispute
- Party autonomy
- Legal, language and cultural neutrality
- Confidentiality
- Speediness of settlement
- Finality of agreement
- Enforceability of agreement

## *Assess mediability*

- Is there readiness to:
  - Accept contact with the other party and the mediator
  - Work towards trust through building of safety
  - Maximize sense of responsibility
  - Develop constructive communication
  - Recognize mutuality

## *Explain the stages of mediation*

- Contracting
- Developing the Issues
- Dealing with Conflict
- Developing and Evaluating Options
- Concluding Agreement

## *Mediation Ground Rules*

- Confidentiality
  - Outside mediation
    - Pending litigation
    - Third parties
  - Within mediation
- Caucusing or not?
- Costs
- Developing interests
- Creating value

# *Mediation Administration Rules*

- Entire procedure
- Appointment mediator
- Mediator's fees
- Mediator's role
- Place of the mediation
- Language(s) of the mediation
- Place of mediation
- Costs
- → WIPO Rules; INTA Rules

## *Educate party*

- Video
- Mock mediation
- List of mediators (INTA, WIPO, ...)

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