

# HEC MONTRÉAL



## CYBERJUSTICE: RECONCILING JUSTICE AND TECHNOLOGY

Cyberjustice Annual Meeting 2015

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OCTOBER 15, 2015

# RECONCILING JUSTICE AND TECHNOLOGY

- Main findings from a workshop

Held during MCETECH 2015 conference in Montréal

Goal: Experts view on **potential improvements** to **judicial system** that may be achieved with **technology**

# DIMENSIONS OF ACCESS TO JUSTICE A COMPUTER SCIENCE ANALYSIS

Philosophical Layer

Semantic layer

Physical Layer

# DIMENSIONS OF ACCESS TO JUSTICE

Philosophical Layer

Semantic layer

Physical Layer

# DIMENSIONS OF ACCESS TO JUSTICE

## Philosophical Layer

Semantic layer

Physical Layer

- Procedural access: having a fair hearing before a tribunal
- Substantive justice: Receive a fair and just remedy for a violation of one's rights

(GAATW, 2014)

# DIMENSIONS OF ACCESS TO JUSTICE

Philosophical Layer

Semantic layer

Physical Layer

- Understanding an individual has of the laws governing his life
- Understanding of the judicial process that needs to be followed when that individual has a claim to be confirmed

# DIMENSIONS OF ACCESS TO JUSTICE

Philosophical Layer

Semantic layer

Physical Layer

- Time: when availability, how long, etc.
- Place: where available, reachable, etc.
- Costs: affordable

# METHODS OF COMPUTER SCIENCE

- Building Systems
  - Legal Knowledge Based Systems
  - Argumentation Support Systems
- Building Abstractions of Reality
  - Goal: Automating Legal Tasks

# METHODS OF INFORMATION SYSTEMS

- Understanding Fit Between Legal System and Technology
  - Identifying User Requirements
  - Identifying Design Guidelines
  - Identifying Organizational Constraints

# METHODS OF INFORMATION SYSTEMS

## EIGHT DESIGN GUIDELINES FOR E-JUSTICE SYSTEMS

Design Principle	Trial Online	Money Claim Online	e-Codex
<b>Bootstrapping and accessibility</b>	The original project was characterized by high complexity and high costs for activation by external users.	Rapid diffusion thanks to easy to use service, understandable procedure, switch to paper-base procedure, limited functionalities in the beginning (it was available only for claimants; defendant functionalities added later).	Main focus on advertising the project between potential users. Low focus on reducing system's complexity and facilitating procedure.
<b>Maximum manageable and minimum feasible complexity</b>	System diffused in Milan only when complexity of the original project have been reduced. Reduction of complexity by delegating to external agencies.	Low complexity of the system. Not below the maximum feasible simplicity: the system covers the entire procedure, from claim filing to notification and to enforcement.	Complexity derives principally from the national systems that have been connected. Also the issues of the European Procedure (EPO) that has been digitalized contribute to raise system's complexity.

# METHODS OF INFORMATION SYSTEMS

## EIGHT DESIGN GUIDELINES FOR E-JUSTICE SYSTEMS

Design Principle	Trial Online	Money Claim Online	e-Codex
<b>Adaptability</b>	Rigid system, many redundant modules tightly coupled.	Very adaptable (changes in one module did not affect the system): ex. modification of the accounting system.	The modular architecture should assure the adaptability of the system.
<b>Modularization</b>	Excess of modularization. Many unstable components.	Modularized, structure composed of several loose-coupled modules; comprises also private companies.	Constituted by a set of loose-coupled modules comprising also different national systems for e-filing of possession orders.

# METHODS OF INFORMATION SYSTEMS

## EIGHT DESIGN GUIDELINES FOR E-JUSTICE SYSTEMS

Design Principle	Trial Online	Money Claim Online	e-Codex
<b>Law &amp; Technology</b>	Hypertrophic regulation, legal formalism.	Legal change in parallel with technological change.	Simply inscribed EU procedure for possession orders into technology; normative change only regarded an agreement that disciplines the functioning of the system.
<b>Installed Base</b>	Most of the installed base has been dismissed, however legal and organizational installed base remained (installed base that limit system's performances).	Utilized agencies that already were dealing with claims issued electronically: CPC (Claim Production Centre) and CCBC (County Court Bulk Centre).	Installed base constituted by the national systems connected through e-Codex and by the European procedure for possession claims that is affected by many issues.

# METHODS OF INFORMATION SYSTEMS

## EIGHT DESIGN GUIDELINES FOR E-JUSTICE SYSTEMS

Design Principle	Trial Online	Money Claim Online	e-Codex
<b>Psychological and political/power aspects</b>	Both for the first version and for the simplified version: involvement of judges, court staff, lawyers, MoJ officials. Involvement of Milan Bar Association, creation of the Innovation Office.	Involvement of stakeholders during and after development; coordinated activity of multiple private and public actors.	Bootstrapping through involvement of stakeholders: consumers associations, bars, judges. Division of work among multiple specialists with different backgrounds.
<b>Architecture</b>	Decentralized: system not present in all Tribunals. Delivery of service is decentralized.	Centralized system: only one website, one agency that manages the claim (CCBC), one court that issues it (Northampton County Court).	Decentralized system. Connects national e-filing systems to Court's system for cases' management. Potential disparity of service's quality between European citizens.

# UNEXPECTED IMPACTS OF TECHNOLOGY ON LAW

## ODR AND THE 4TH PARTY

- Technology and network become 4th party assisting the 3rd party (judge) (Katsh and Rifkin, 2001)
- Fifth party (technology provider) (Lodder and Zeleznikow, xxxx)
- Technology does not have (to date) a mind of its own
  - Should not be considered as fourth party
  - Technology provider must be considered instead

# UNEXPECTED IMPACTS OF TECHNOLOGY ON LAW

## PRINCIPLE OF TECHNOLOGICAL NEUTRALITY

1. Technological solutions used for similar purposes should be regulated similarly
  - Focus on function, not implementation
2. Consumers/companies can choose the most suitable technological solutions
  - Calls for standardization of solutions/interfaces
3. Technology itself addressed in a neutral way
  - Technology should not be understood as good or bad in itself