Proceedings on the Web

José Eduardo de Resende Chaves Júnior

“The just are only effective,
can only maintain the existence of a community,
establishing a collective intelligence”.
Pierre Lévy

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1. Introduction

The new doctrine on the computerization of court proceedings is still too highly conditioned to the aspects of the nomenclature of these novelties of the legal world, which is natural in the process of affirmation and construction of all new disciplines; however, this discussion must not, on any account, leave out what appears to us to be the true quid of the issue: the reticular character that the new technologies of

1 José Eduardo de Resende Chaves Júnior, President of the Latin American Judges Network – REDLAJ; Principal Judge of the 21st Court Circuit of Belo Horizonte, State of Minas Gerais, Doctor in Fundamental Rights by the Universidad Carlos III de Madrid; Coordinator of GEDEL – Justice and Electronic Law Study Group of the Judicial School of TRT-MG. Member of the Brazilian Institute of Electronic Law - IBDE.


communication and information bring to the court proceedings, that is, their virtual insertion on the network, especially on the world computer network, the Internet.

The dematerialization of court records, that is, their passage from the analogical world of atoms to the digital world of bits – and even the qbits with the imminent arrival of the quantic computer – is undoubtedly of itself comparable to the arrival of the printing press to culture. But the changes resulting from this dematerialization are expanded exponentially when it is understood that the electronic process is, and can be, above all, a networking process.

The specificity of the network phenomena brought about, in the field of the exact sciences, a new science called network sciences. The typical formalization of mathematics and physics brought the migration of these concepts of the new sciences to sociology and economics.

The challenge that appears now is precisely to catalyze this new knowledge to the legal world, and, especially, to court proceedings. In this paper we will seek to give at least the first hints so that these new tools may be applied to the electronic mesh of procedural rights and duties.

2. Connection and Legal Circles

2.1 Connection. An initial observation that can be made is that, from the conceptual point of view of pure decidability, the e-procedure profoundly alters the relation between court records and the world. On the paper proceedings, the records are the very material incarnation of the division, distance, that is, the separation between what is decided and what is in the society-world, synthesized in the so-called principle of writing: quod non est in actis non est in mundo.

In electronic proceedings, the principle is – or intends to be – precisely the opposite, that is, the principle is that of approximation, connection between the records (virtual) and the network-world, in that the frontier records-world is dematerialized, since both are in so-called data space.

The access of electronic court records to the real-virtual world through hypertext (link), although it does not allow access to the material world, brings to the records another world of information, evidence and radically changes the very reasoning of procedures.
This new records-world connection is in fact the connection of the proceedings subjects, judge, plaintiff and defendant with virtual society. The proceedings, therefore, are no longer a merely angular, segmented and isolated flow and become a reticular (networked) and collective flow.

But why is so much said about networks? According to the scholars of the School of Networks, especially Augusto de Franco: “networks are systems of nodes and connections. In the case of social networks, these nodes are people and the connections are the relations between these people. The relations here are marked by the possibility of one person issuing or receiving messages from another. When this happens, we in fact say that a connection has been established”.

The first steps of the so-called network theory were taken in the work of mathematician Ŕuler, who formulated “graph theory”. A graph is a representation of a set of nodes connected by edges. Erdős and Rényi were the first to relate graphs to social networks. There is a lot of work about complex networks, later applied to social networks, including virtual networks. Here we may quote the models of Barabási, Watts and Strogatz and Erdős and Rényi.

It is important here to underline the cumulative and expansive character of network, as shown by Barry Wellman and Barabási. In a network, everything tends to grow on gigantic proportions and scales, and even out of apparent control.

4 Angular in the sense of angular legal relation.
5 www.escoladeredes.org
7 A graph with 6 vertices and 7 edges. “A graph G is an ordained triple (V(G), E(G), Ψg) which consists of a set V(G) of vertices, a set E(G) of edges without intersection with V(G), and a function of incidence Ψg that associates to each edge of G a non-ordained pair of vertices (not necessarily distinct) in G.” Bondy, Murty, 1976, p. 01.
8 The analysis of social networks begins with two branches: (i) of whole networks and of (ii) personal networks. The first branch focuses on the relation of the group with the network; the other, on the individual with the network. The concept of multiplicity is involved in complex networks. This means the degree of multiplicity of the flow of social bonds found in a given social network. The novelty in the study of networks is in realizing the network structure not as determined and determining, but as changeable in time and space. Another concept of network theory is cluster, which is a group of social groups connected coherently (nodes). Cfr. Recuero, last access on June 14, 2009
9 Barry Wellman speaks of the rule ‘the more, more’, which applies in the interaction between networks on the internet: the more the social-physical network is used, the more the internet is used; the more the internet is used, the more the physical network is reinforced. Cfr. Wellman, Barry and Gulia, Mena in Barry Wellman, pp. 331-366 apud Castels, 2002, p. 444
There are many papers by Wellman and his group available at his virtual page at the University of Toronto, Access on 05/09/2008.

The model 'non-scale networks' was formulated by Barabási. This model is based on the rich get richer phenomenon, as in Wellman. This means that the more connections there are to a node, the more opportunities there are of having others. Therefore, the networks are not equal, since there is a preferential link to the most widely used. Cfr. BARABÁSI, 2002, pp. 79-82. The name 'no stop-overs' comes from the mathematical representation of the network, which follows a curve called power-law, also known as the 'Pareto law' or the '80/20 rule, which refers to a proportion that frequently occurs in network phenomena. Cfr. BARABÁSI, 2002, pp. 66-71.

Augusto de Franco also notes that “there are many kinds of network, amongst which the better known and quoted are biological networks (the neural network, for example, connecting the neurons of the brain of animals, or the web of life that assures the sustainability of ecosystems, connecting micro-organisms, plants and animals and other natural elements) and the social network (although there are also machine networks – such as the world wide web which we call the Internet – which are social networks in that they connect people.) There is a similarity between these organizational patterns so that, studying them, it is possible to understand the multiverse of hidden connections which make up what we call social”

These network phenomena can be clearly seen in the very evolution of the economy of new technologies. Bill Gates confirmed his retirement in mid 2008, announcing the second digital era, the era of connectivity – others prefer the term ‘connectibility’. His retirement underlines this new era, since all the fame and money Microsoft were generated from the idea of the PC, the personal computer, which gave individuality a central position.

The value of the brand Google overtook Microsoft in the market, which explains this race after the so-called virtual social networks. We have, in effect, entered the era of the common, of the Spinosean crowd, the Deleuzean rhizome, in detriment to the traditional ideas of collectives, such as people, public, class, proletariat, mass.

In the second era, there is the decline of the personal, the individual, the private: the common crosses over the public and the private. The third sector with the greater potential of networking than the public and the private sectors has the energy to swallow up the State and the company in the future.

Cfr. in www.augustodefranco.com.br – Carta Rede Social n. 171

In Portuguese, the “Vocabulário Ortográfico da Língua Portuguesa – VOLP” accepts both forms.

Microsoft announces the launching of its competitor to Google: BING: www.bing.com.br

The idea of common has roots in Negri and Hardt and is linked to Aristotle’s concept of ‘common place’, as described by Paolo Virno: “Today when we speak of «common place», we usually understand it as stereotyped speech, almost devoid of any meaning, banalities, dead—his eyes are headlights”—, repeated discourse. However, this was not the original meaning of commonplace. For Aristotle, the topoi koinoi are logical and linguistic forms.
of general value, as if speaking of the bone structure of each of our discourses, that which allows and ordains each particular utterance. These ‘places’ are common because no one – neither the refined orator, nor the drunk who blubbers meaningless words, nor the salesman or the politician – can escape them.” Cfr. VIRNO, 2003, pp. 34-35

It is not by chance that Bill Gates retired to dedicate himself to his foundation, after donating 30 billion dollars of his personal fortune to it. Warren Buffett, owner of the Wall Mart chain, also one of the richest men in the world, did the same and donated 44 billion dollars to his foundation. This common fund begins with a budget larger than that of most countries in the world – about 10% of Brazilian GDP.

We believe that we may, in fact, think of a new digital and political era, the network era. If IBM was unable to see in the seventies that the decisive novelty of computer economics was the immaterial software, today Microsoft, on the other hand, is losing ground to Google because it was slow to understand the wealth provided by the so-called network externalities16.

Besides the network externalities, in the immaterial economics of computing, there arises the idea of the nullification of two classic laws of economics: the law of scarcity4 and the law of decreasing income5. In the new immaterial economics, what is valid is the law of abundance and growing income.

On the other hand, production based on network externalities institutes a new form of economic production which is decentralized, collaborative and which can escape market rules - commons-based peer production6.

Giuseppe Cocco points out that in reticular production, the terms netwares and wetware7 “are mobilized to supplement hardware and software and to apprehend the new forms of work and/or production interaction in the spheres of virtual cooperation.

16 French economist Yann Moulier Boutang, observes that: “When an economic operation between two agents A and B has an effect on a third agent C without a monetary transaction or convention of Exchange.

4 Traditionally, economics is seen as the science which seeks to balance human needs, which, by nature, are unlimited, to the resources which are always limited and scarce. One of the purposes of economic activity is the fight against scarcity. Cfr. COTTA, 1978, p.168

5 The so-called law of “decreasing income” (or non-proportionals) was formulated by classical economists. According to this law, the relation between the quantity of the product and of one (or several) production factors has a tendency to decrease when production increases. In other words, this law says that duplicating inputs in a physical process does not duplicate production. Marx criticizes this law, stating that it applies more to agriculture than to industry, because technical growth itself stops the decrease. Cfr. COTTA, 1978, pp. 361-362

6 Cfr. BENKLER, p. 60

7 Wetware and netware are correlate terms. The first refers to the individual capacity to operate hardware and software systems, a capacity that is developed from the point of view of the user or consumer, interactively, in production. The emphasis here is work and innovation, from the point of view of consumption. Netware is the collective outlook of this same interaction with consumption from the network. Cfr. COCCO, 2003, pp. 9-10.

Cfr. also MOULIER-BOUTANG, 2004, pp.54-55.
between A and C, or B and C, it is said that it creates an externality. If an externality created operates in detriment of C, that is, if it reduces his current wellbeing, or deprives him of enjoying a good, a potential service, it is said that it is a negative externality or an external dis-economy. If, due to the transaction between A and B, agent C sees an increase of his wellbeing, his wealth, opportunities for action, knowledge or improvement of his environment, it is said there is the creation of a positive externality. Economist Alfred Marshall introduced the idea of technologically possible externalities, for a company C which, through its geographic implementation, benefits the setting (transport, accessibility, market proximity) beyond its fiscal or mercantile contribution. For Marshall, the growth of the company that does not depend on the accumulation of capital and labor, but of technique, is explained by technological externalities. Cfr. MOULIER-BOUTANG, 2004, p. 147 networks”. Moulier-Boutang adds that the hegemonic goods of so-called cognitive capitalism are made up of 4 simultaneous factors: (i) hardware; (ii) software; (iii) wetware and (iv) netware. He states that netware has a hegemonic, that is, determining role among them, however, the four factors cannot be reduced to one of them. He also notes that capital cannot have complete control of any of the four factors.

Transporting these outlooks to the special case of electronic court procedures, what seems decisive is to understand it as a phenomenon of interaction between the judge, the parties and society, that is, as a phenomenon of a social, economic and political network and not a mere IT structure for court cases.

2.2 Legal circles. There is a great deal of resistance (which we might call ergonomic) to the use of the computer in legal circles. It is often stated that it is easier to handle court records on paper.

Some difficulty at the current technological development cannot be denied, however, we all know how difficult it is to handle, for example, records which run into 40 volumes; in electronic proceedings, internal search mechanisms will greatly facilitate searching into the records.

There are also technologies such as multi-touch and e-ink available on the market, and even computational vision and voice recognition, which will soon provide more ergonomic solutions to electronic proceedings. There is also the so-called e-paper, of oleds or organic leds, which make it possible to produce very thin monitors, the thickness of paper, and which are also flexible. There is even an anecdote that clearly shows the overcoming of concerns with the comfort of electronic handling, because, for

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8 Cfr. Ibid., p. 9
those who prefer the old paper proceedings, it is possible to foresee the e-paper proceedings...

This wordplay is interesting also to undo another mistaken idea, that is, that electronic proceedings are the simple virtual transposition of court records, without any intervention in the principles and traditional science of proceedings.

The great media scholar of the 20th century, the Canadian Marshal McLuhan, summarized in the well-known phrase that “the medium is the message”\(^{10}\) – that is, the idea that the means of communication and transmission of the message is not neutral, since it conditions even the content – the importance of the means of communication and information for rationality itself\(^{11}\). The means are seen as an extension of human beings\(^{12}\). This idea is very useful for the current discussion of electronic proceedings on the dematerialized and virtual court records.

There is a profound interaction between the actual and the virtual, every actual is surrounded by a cloud of virtuals, as Gilles Deleuze had noted\(^{13}\). The great Internet philosopher, Pierre Lévy, a disciple of Deleuze, rightly notes that it is important to understand that virtualization:

"is not a de-realization (the transformation of reality into a set of possibilities), but a mutation of identity, a dislocation of the ontological center of gravity of the object considered: instead of defining it mainly for its actuality (a solution), the entity finds its essential consistency in a problematic field.” And he continues:

“To virtualize an entity consists in discovering a general issue to which it is related, to mutate the entity towards this interrogation and redefine the starting actuality as a response to a particular issue.”\(^{14}\)

Cândido Dinamarco, on the other hand, stated that proceedings are ‘medium’\(^{15}\), instrument of validation not only of material rights, but also social and political values,

\(^{10}\) Cfr. McLuhan, 1969, p. 54
\(^{11}\) Cfr. McLuhan, 1969, p. 69
\(^{12}\) Cfr. McLuhan, 1979, p. 21
\(^{13}\) Cfr. Deleuze 1996, p. 49
\(^{15}\) “Every instrument, as such, is the medium; and every medium is only such and is legitimated according to the purposes it was intended for (p. 206) (...) In other words, the instrumentalist view of proceedings is, by definition, teleological and the teleological method invariably leads to a view of proceedings as the instrument predisposed to carry out the chosen objectives”. Cfr. Dinamarco, 1990, p. 207.
that is, he underlines the importance of proceedings also to assure meta-legal scopes. For Dinamarco, the instrumentality of the proceedings is double, negative (the instrumentality of forms) and positive (instrumentality for the implementation of rights).¹⁶

Drawing together McLuhan and Dinamarco: if, on the one hand, these legal circles cannot become an end in themselves to the delight of proceedings scholars, on the other hand, the medium is not exempt, nor neutral, since it influences and contaminates the very course of proceedings, the way the parties participate and even the content of the judge’s decision, as they are conditioned in this way by the hypertextual and reticular dynamics of the new decidability procedure, that is, the Levynian redefinition of “starting actuality as a response to a particular issue”.

Therefore, the electronic medium, besides greatly conditioning the jurisprudence content, will maximize the very instrumentality¹⁷ of the proceedings, that will have far fewer material links and limitations, allowing the increase of its deformalization and widening the possibilities of proof. Finally, the electronic medium reinforces that the proceedings is a medium and an instrument, therefore enabling the privileging of the social and political scope of the demand in the proceedings.

3. The Judge and Connectivity

Redefining the actuality of the process of judicial decision-making will be, primarily, conditioned by the alteration of the individualized way these proceedings occur in making up the conviction of the judge, since the judicial decision, even when proffered in a collegiate way in the courts, flows from a viscerally monocratic conviction process.

Setting aside the complex mathematical formalizations of the new network theory, Catalan sociologist Manuel Castells transformed a simple insight into a

¹⁶ “This has in common with the instrumentality of forms its negative direction, that is, the function of warning of the functional limitations (of the forms there, here of the same procedural system). The negative side of the instrumentality of proceedings is a current methodological achievement, an awareness that it is not a purpose of itself (…) The positive direction of instrumental reasoning leads to the idea of effectiveness of proceedings, understood in the social and political legal context.” Cfr. DINAMARCO, 1990, p. 379.

monumental trilogy about the information era. His great perception was that ‘the power of flows is more important than the flow of power’.

This statement is far more revolutionary than appears, because it means, in practice, to highlight all the power of interactive connections of collectively articulated intelligence.

However, how does this affect contemporary judges? The answer is simple: it allows a view of the magistrate not as Power, but as power and counter-power, that is, before representing Power, constituted and static Power, contemporary judges can catalyze the flows of the dynamics of the bonds of collectivity.

On the one hand, a sentence is an act of intelligence. On the other, the feeling is imbedded in the depths of its own Latin etymology (sententia,ae, ‘feeling’). But feeling and intellect are the two spheres most affected by the power of flows and inflows of the new technologies of information and communication.

The solitary genius is no longer valid today. No one can compete with the speed and creative wealth of the flows of knowledge which irradiate over the Internet. No one, in isolation, holds even the knowledge available of a single area of learning.

The solipsist judge who disconnects the proceedings from the world, who does not interact with the parties and socio-cultural context, finds it hard to operate with social appropriateness.

The sentence is no longer an isolated feeling, resulting from a private legal rationality, an individual justice. The contemporary feeling of justice is eminently collective, collaborative and showing solidarity. This feeling, crystallized in the very etymology of the sentence, rather than individual, is pro indiviso, common and shared in its entirety.

The contemporary sentence tends to be ‘common place’, not in the sense of stereotyped expressions, but in the Aristotelian sense - tópos koinós – that is, a discourse contrasting to ‘special places’, specialized discourses, private knowledge.

This ‘common place’ is not the text signed on paper by the individuality of the judge, but the hypertext, the communal mesh which does not cease to communicate, construct and reconstruct through the virtual proceedings.

Therefore, we must be alert so that the stupendous advance brought by the law of electronic proceedings, which asserts open source code, free software, the Internet
and virtual proceedings as a rule, is not channeled in the opposite direction, that is, to the bonding verticalization of proceedings.

Experience shows that closed and opaque computerized proceedings of judiciary systems in the hands of a few specialists condition and imprison the freedom and independence of the judge in guiding the judgment which, in effect, results in a brutal loss of procedural and instrumental phenomenality of legal access and, consequently, the loss of effectiveness of the material rights of citizens.

4. Specific Principles of Electronic Proceedings

This moment of implementing virtual justice in Brazil and in the world may be a privileged occasion, in which doctrine and jurisprudence can channel the flows of emancipation provided by the new technologies of information and communication, or it could mean a conservative option, the choice for the simple ‘computerization of inefficiency’\textsuperscript{18} of today’s proceedings.

We have, in fact, two paths before us. The first would be to think of the scanned proceedings, and not refer to the digitalization of the paper proceedings, but, in fact, the mental process of copying the vices of writing, the inefficiency of paper proceedings and export them to the electronic proceedings. This would mean to think the electronic proceedings with a paper head.

The second path, which seems more promising, is to effectively exploit the potential of the new information and communication technologies, of connection, the law of abundance of bits and qbits and the law of growing income, of the so-called positive externalities of the internet, and channel these outlooks to new proceedings, a new proceedings rationality that can make people’s rights more effective and court decisions fairer and more adequate.

It would be naïve to imagine that a sheet of paper has the same political and social potential as the computer monitor. The press brought down a thousand year

\textsuperscript{18} This term was coined by Judge Antônio Gomes de Vasconcelos, during the debates in the Thematic Workshops of the I Congresso Mineiro – Justiça Digital e Direito do Trabalho (1\textsuperscript{st} Minas Gerais Conference on Digital Justice and Labor Law), held by the Regional labor Tribunal of Minas Gerais and its Judicial School in the town of Caxambu, State of Minas Gerais, Brazil in August, 2008.
hegemony of the culture of writing, the iron fist of the Church, giving way Gutemberg’s universe. The new technologies, in the same way, are re-ordaining the shape of power.

Therefore, to mechanically import the classical principles of the paper proceedings to the electronic proceedings seems absolutely inadequate and, for this reason, we disagree with those who interpret Law 11.419/2006 as mere procedure. It is essential to develop a specific legal technology in order to optimize the potential that these new communication and information technologies can provide for the resolution of legal conflicts.

The scope of this challenge is not the work of a single person, nor is it within the scope of this paper. What is intended here is to suggest the first steps of this path.

Seven new principles are suggested here, which are clearly connected to the traditional principles of proceedings, but which, given the new nuances brought by the new medium, take a quantum leap or undergo a topologic twist which differentiates them from the traditional view. In the current phase of our research, we may present the following list: the principle of immateriality; of connection; of intermediality; of interaction; hyper-reality, instantaneity; and, finally, the principle of deterritorialization.

Let us examine each of them more carefully.

4.1. The Principle of Immateriality

The first characteristic of the electronic proceedings is the very dematerialization of the court records.

Therefore, in Portuguese, autos (court records) and atos (acts), which have a common etymology, come even closer to the idea of pure movement, impulse, activity. Both have a more intense duality in that they do not crystallize, they are certified in an immaterial, digital form. However, the court records continue to be the pure immaterial certification of the acts of proceedings. Therefore, one can no longer see certification as the mere materialization of the procedural acts.

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19 “[...] the extrinsic medium in which proceedings are initiated, carried out and concluded; it is the extrinsic manifestation of this, its perceptible phenomenal reality.” CINTRA, 2000. p. 277.

20 Chief Judge Fernando Neto Botelho, one of the greatest Brazilian authorities in legal computing, also follows the line of developing new and specific principles in electronic proceedings. Cfr. BOTELHO, 2009, available at http://www.amatra18.org.br/site/index.do

To a certain extent, the verb to document and the noun document recover the etymological meaning in the electronic medium, which is not linked to the idea of the materialization of the procedural acts. Document derives from the Latin documentum, which means teaching, lesson. The meaning is, therefore, more abstract than material. Teaching is an activity, and not a material object (res).

Following the same line, the ideas of ‘proceedings’, ‘procedure’ and ‘court records’ are also drawn together, since they are not distinct in the electronic proceedings, in the pure materialization of procedural acts, that is, these three concepts come close to the idea of flow, impulse and movement.

To dematerialize here does not obviously mean the passage to a mystical, spiritual or similar world, but simply the passage from the world of atoms, of matter, to the world of bits, that is, to the logical or formal world, to the world of language – the language of machines.

Of course this passage is not neutral, because the analogical world of matter is not the same as the logical, formal world of language.

The world of bits is the world of language, of binary language. And language has a very unique feature which is the communication-information duality, that is, language is the content of information and, at the same time, it is communication, transmission, connection.

Therefore, the principle of immateriality of electronic proceedings reinforces the idea that the new proceedings is, above all, a linguistic process which links the subjects of the proceedings – the judge, the plaintiff and the defendant – essentially through the language of men and of machines. In other words, the stabilization of judicial demand is done through language of pure logical form, and no longer by the material form (on paper). Here writing and language take on very different meanings.

Also, the dual character of the immateriality of the new proceedings emphasizes, on the other hand, that the proceedings include both the load of content (information) of

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22 Latin etymology: documentum, i ‘teaching, lesson, announcement, warning, model, example, clue, sign, indication, proof, sample, evidence that brings faith, document’, from Latin verb docére 'teach'; see doc(t)- Cfr. HOUAISS, 2003
the material rights at issue, as well as the very discussion, the debate, the communication, the transmission and the traffic of acts and data.

This new linguistic and immaterial concept of proceedings better balances its democratic-formal aspect – proceedings as the formal presupposition of democracy – as well as its material aspect, the social effectiveness of the rights assured by the democratic constitutional order.

From this point of view, immateriality emphasizes the instrumentalist current of proceedings by dematerializing formalisms in favor of a social adaptation of material rights.

The principle of immateriality is not opposed to actualized reality. The virtual is not opposed to the actual, as was shown. The virtual privileges more the might than the act, and, in this way, invites to a stance which is more transforming of reality – (actual). Electronic proceedings are not proceedings that crystallize an actuality, the status quo ante, and in this way tend to seek the unending actualization, the power of update.

Electronic proceedings are, therefore, able to perform as being the expression of might, than the Power of State, reiterating, therefore, the concept of law as the limit to power. Here the distinction by Spinoza in presuppositions 34 and 35 of his Ethics, between might (potestas) and power (potentia). For Negri, the separation between potestas and potentia was the center of the fundamental logical struggle of Spinoza’s Ethics. Potestas was understood as the capacity to build things and potentia as the force that actualizes, that is, the force that makes real.

The proceedings in the material sphere tend to repress and contain forms and conducts. The principle of immateriality, on the other hand, tends to be proactive.

It is well known that principles are not as rigid as norms. They are more flexible, indicative, precepts of optimization and indicate tendencies and new paths; they do not impose necessary behavior or provide only a single correct answer. From this point of view, the principle of immateriality is a permanent invitation to doctrine and to

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24 This duality is well highlighted in the very dogmatics of electronic proceedings, as can be seen, in verbis, clause I, § 2q. Article I of Law 11.419/2006: “For the subject of this law, it is considered: I – any kind of electronic medium for storage or transfer of digital documents and files;”. (my highlight).
25 “Proposito XXXIV: Dei potentia est ipsa ipsius essentia”. “Proposito XXXV: Quicquid concipimus in Dei potestate esse, id necessario est”. Cfr. SPINOZA, 1913 (a) p. 66
26 Cfr. NEGRI, 2000, p.43
jurisprudence and, mainly, to the daily practice of proceedings, to find the most pragmatic and fair medium, to seek a fairer solution to the demand. They are not casuistic proceedings, but of concrete case proceedings.

On the other hand, if the principle of immateriality indicates flexible proceedings, on the other hand, the workflows of electronic proceedings systems will tend to contain and balance possible excesses and discretions of the judiciary. Conditioned to workflow and challenged by immateriality, the actors of the proceedings will mold over time a more constructivist and more democratic concept of proceedings.

4.2 Principle of Connection

Electronic proceedings are, above all, a network process open to connection from the (i) technological point of view and from the (ii) social point of view, that is, a process of connection between systems, machines and people.

The idea of a networking connection makes all the difference. The connected proceedings are very different from the unplugged proceedings from various points of view. We may systematically organize them from two main points of view: the first is reticular connection and the second, inquisitive connection. However, it must be stated, and this could not be otherwise, that both views are connected to each other, both of which benefiting from what Pierre Lévy called ‘collective intelligence’

4.2.1 Reticular Connection. Reticular, of course, is an adjective that describes everything with the shape of a network. This adjective describes and emphasizes not only a connection, a linear connection, but a qualified connection in a network.

A linear connection is only the approximation between two adjacencies. A reticular connection presupposes a change of scale, of level, of logic. A linear connection brings a predictable and stable flow; a network connection has a complex unstable flow. There is no rigid linearity in the sequence of online electronic procedural flow. There are not even numbered pages in virtual court records, but flowing events.

27 “It is an intelligence distributed everywhere, incessantly valid, coordinated in real time, which results in an effective mobilization of competencies”. We ad to our definition this indispensable supplement: the base and objective of collective intelligence are the mutual recognition and enriching of people, and not the worship of fetished or hypothesized communities” Cfr. LÉVY, 2003, pp. 28-29
Electronic proceedings are not different only because of dematerialization, but, above all, by the possibility of this dematerialization enabling incessant transmission, in real time, of the content of the proceedings acts and practices. With electronic proceedings it does not make sense to ask for time out for individual examination of the proceedings, since the proceedings are connected to the parties and to society 24 hours a day 365 days a year.

Publicity in paper proceedings was a mere possibility, the physical and material distance made publicity into mere presumption; with virtual proceedings, however, it is much more than presumption, it is a reality, that is, publicity is virtual, but not in the sense of possibility, but of a virtual and effective reality\textsuperscript{28}, since, as has been shown, the virtual is not opposed to the real.

The so-called principle of writing - quod non est in actis non est in mundo - ended the oral phase dating from Roman proceedings\textsuperscript{29} and even the Germanic medieval proceedings\textsuperscript{30}, entering into the Canonic Code. The principle of writing sought to give legal security and stability to procedural acts, but, at the same time, separated the court records from the world.

This records-world disconnect tended to shape all the argument strategy and the performance of the parties and the judge in the proceedings. Not even the later recovery of orality, five centuries later, was able to change the profoundly structuring nature of the principle of writing, since the orality of the paper medium did not break the idea that what was not in the records was outside the proceedings.

With the arrival of new communication and information technologies and the extended possibilities of connectivity provided by them, there is finally a breakdown of the rigid separation between the world of proceedings and of social relations, since the electronic medium transcends the material limitations of the paper medium. Hypertext – the link – the so-called language of technological jargon – allows the drawing together

\textsuperscript{28} This is the only reason why Law 11.419/2006 (art. 11, § 6º), considered allowing access to outside network of the private documents only to the parties, those with power of attorney and the public prosecutor’s office.

\textsuperscript{29} During the period of procedure of the actions of law, Roman proceedings were totally oral. Only when proceedings started to follow a formula did they become partially written. Cfr. CRUZ E TUCCI & AZEVEDO, 2001, p.78

\textsuperscript{30} Germanic barbarian proceedings, in the high Middle Ages, were essential oral, although in the Iberian Peninsula there still retained aspects of the former mixed Roman proceedings. Cfr. GUEDES, 2003, PP. 21-23.
between records and truth (actual and virtual) contained on the network, without bringing about a chaotic degree of legal destabilization in the mediatic structure of the proceedings.

Also, the principle of reticular connection makes judicial proceedings into a less segmented and sequential phenomenon. It makes the acts less deductive and syllogistic. It swaps the departmentalization of acts by the instantaneous, by logical time, actual time. Deadlines are no longer a separate concept, but take on a more dynamic, concrete and real meaning which reaches all hours of the day, but also reduces and shapes the concrete pragmatics of the acts.

From logical preclusion we strike towards preclusive induction, that is, induction is emphasized to the detriment of deduction in procedural logic. Reticular preclusion is not conditioned to a rigid process of formal contradiction between acts. The incompatibility of acts is not only logically deduced, since it can also be induced in a much stronger way in the concrete and specific case. Clearing up formal nullities no longer depends only on the inertia of one of the parties at the first opportunity to manifest themselves in the records. The principle of network connection imposes on the parties the need for permanent, real time surveillance.

Connection increases the responsibility of the parties in the proceedings, as the counterpart to the very expansion of their participation. Democracy increases rights, duties and responsibilities. As has already been stated with regard to the sentence, the principle of reticular connection leads proceedings to the ‘common place’ - tópos koinós - to the virtual Agora, where specialized discourses and procedural technicalities tend to give way – to some extent, we may think in terms of the technology of deformalization of proceedings.

4.2.2. Principle of Inquisitive Connection. On the other hand, the principle of connection, naturally makes proceedings more inquisitive. For proof, the classical principles of writing - quod non est in actis non est in mundo – has always been decisive. This separation between what is in the records and what is in the world is also a mechanism of rationalization and organization of the production of proof. In the paper proceedings, this principle is also intuitive, since there is no way to demand that the
judge should know anything outside the reality materialized and established in the records.

In virtual proceedings, this separation is literally dematerialized. The frontiers between court records and the world are no longer so clear, because both belong to the virtual world. The virtuality of the connection – the hypertext – profoundly alters the limits of the search for proof, because, as is known, the links allow indefinite navigation through the virtual worlds of information, one link always leads to another and so on… The so-called semantic Web\(^{31}\) carries this radiation of information to unimaginable levels.

The theory of proof used the open concept of ‘public and notorious fact’ to deal with public facts in proceedings. In the world of the Internet, the scale of facts of public knowledge increase to gigantic proportions, since what is decisive is not knowledge of the fact, but the possibility of access to it, the connection. It is certain that doctrine, jurisprudence and legislation will over time establish the limits for virtual navigation, in order to avoid bringing chaos into the flow of proceedings. But this regulation shows that in fact reticular proceedings place the actors of the proceedings in another world, in another kind of proofs logic.

What has to be kept in mind, however, is that this possibility opens interesting possibilities in the search of the so strongly desired actual truth – rectius: virtual truth – and also greatly transforms the scope of the proceedings calculation of the parties with the burden of proof. This possibility also makes the proceedings into a more ethical instrument, since the increase of the possibility of the search for the actual-virtual truth will be proportional to the reduction of the allegation and negation of virtually verifiable facts.

For electronic proceedings, better than speaking about a ‘public and notorious’ fact, will be, therefore, to operate with the idea of a ‘common and connectable’ fact. Here ‘common’\(^{32}\) is understood also as a noun, extra-state, non-government fact, with

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\(^{31}\) Also known as the World Wide Web Consortium (W3C). The Semantic Web is a data web. There is a great amount of data used everyday that is not part of the web. The view of the Semantic Web is to widen the principles of the Web from documents to data. It allows humans and machines to work in true interaction. After all, the idea is to transform the web from a sea of documents into a sea of data. There is an excellent FAQ at [http://www.w3.org/2001/sw/SW-FAQ#What1](http://www.w3.org/2001/sw/SW-FAQ#What1)

\(^{32}\) The concept of ‘common’ has been used today in a post-structuralist political trend. The concept is formulated mainly by Negri and Hardt and Paolo Virno. The idea of ‘common’ as a noun is connected to the Aristotelian concept of ‘common place’. “Today, when we speak of ‘common place’, we usually
open access by the worldwide web. This will be the possibility of connection by the judge – inquisitive connection – the decisive criterion of insertion of information in the proofs stage of networking proceedings.

4.3. Principle of Intermediality.

“Intermediality” is a concept under construction formulated by theorists of information, communication and literature, which means the process of reciprocal conjugation, interaction and contamination between various media.

This idea is relevant to mark the passage from a strictly fixed proceedings, materially recorded on paper, to a dematerialized, fluid proceedings, recorded only linguistically as binary language.

At first sight, electronic proceedings would mean only the passage from one communication medium – paper – to another, electronic medium. However, from the immateriality of electronic proceedings the result is that the electronic medium does not stabilize in a univocal medium, a single form of communication and information, since the scientific miracle of computing makes it possible that virtual records transcend written language, aggregating sound, image and even sound-images in movement.

Reading a novel is very different from seeing the film from the novel, which, in turn, is also different from its corresponding stage play, which is different from a soap opera. Although the theme is the same, the medium changes and even conditions the way the transmitted message is perceived and understood. Therefore, the medium transforms the very content of the message. It is not neutral. As McLuhan said, the medium is the message.

understand stereotyped speech, almost deprived of meaning, banalities, dead metaphors – “your eyes are two beacons” – artificial conversation. However, this was not the original meaning of the expression ‘common place’. For Aristotle, the topoi koinoi are the logical and linguistic forms of general value, as if it were the bone structure of each of our discourses, that which allows and ordains any specific utterance. These places are common because no one – neither the refined speaker or the drunkard who utters meaningless words, nor the trader or the politician – can set them aside.” Cfr. VIRNO, 2003, pp. 34-35

33 The term "intermediality" is a concept under construction and may appear as a synonym of terms such as ‘intermedia’, ‘intermedias’, drawing close, within the scope of literary studies, of ideas such as ‘intertextuality’, ‘inter-semiotic transposition’, ‘interart studies’. “In this discursive sphere, intermedial refers to the text which intentionally feeds itself from the conjugation of principles which guide different esthetic propositions and media definitions in the plane of a work, producing a multiple context within the specific textual unit.” Cfr. SALDANHA, 2008. In Brazil, in the Literary and Language Graduate Studies Program of the Federal University of Minas Gerais, “intermediality” is the term chosen by the intermedia research group coordinated by Professor Thais Flores Nogueira Diniz. Cfr. http://www.letras.ufmg.br/poslit/13_projetos_pgs/projetos002.html accessed on June 14, 2009.
The possibility of interaction between these different media within virtual proceedings make it, without doubt, much more complex than the traditional proceedings that are recorded almost entirely in written form. In the Brazilian tradition, it is possible to incorporate into the paper records the recordings of electronic, sound and image, but this is precarious, departmentalized, segmented, because, in order to be integrated to the proceedings, these media always challenge a transposition to writing. Image without movement, photography can interact in the paper records without transposition to writing, but this only operates in the paper proceedings in an extraordinary way, not as a rule. It is an exception and it is very limited.

This greater freedom of writing implies, on the other hand, the potentialization of proceedings as a medium, an instrument which assures material rights, since, besides increasing the chances of finding real truth, its intermediality, that is, the greater interaction between the various media, ends up deforming the proceedings, making them more pragmatic and less subject to the rigid rules of a single medium. This deformation enables a stronger channeling of the media towards the social benefits of the proceedings.

Finally, intermediality shows the interdisciplinary aspect of electronic proceedings. It reaches over disciplines, since it applies to civil, penal and labor proceedings. It is not, therefore, a simple procedure; on the contrary, it is much more a transverse process.

4.4 The Principle of Hyper-reality

Another important aspect of electronic proceedings, both from the point of view of the search for actual truth, and the aspect of procedural agility, refers to the radicalization of orality in the proceedings. The principle of orality was recovered at the beginning of the 19th century, with the French Code de Procédure Civile of 1806, followed by the proceedings code of Klein, in Austria (1985), besides the enthusiastic defense of orality in the proceedings carried out by Chiovenda at the beginning of last century and, finally, with its most recent reaffirmation by Cappelletti in the 60’s.

However, traditional orality was always greatly mitigated since, in the end, it always challenged some degree of writing. In electronic proceedings, orality can be
completely preserved – even radicalized – because the hearings can be certified in the court records in their pure sound verbalization, through electronic voice files.

More than simple orality, we may think also of full hyper-realization\textsuperscript{34} of procedural acts, a hyper-reality which recreates and simulates not only sound data, but also image data.

It is worth remembering that orality has always been valued, not only because of its capacity to seek the actual truth – as opposed to the old apothegm that ‘paper accepts everything’ – but also in view of the potential agility that the oral concentration of the acts provides. If the principle of oral concentration in the paper proceedings already provides agility, imagine its potential from the instantaneous intermediality of electronic proceedings.

From the Internet we find the very relevant remarks of the French Internet philosopher, Pierre Lévy:

The arrival at writing accelerated a process of artificialization and exteriorization of memory which, without doubt, started with hominization. Its massive use transformed the face of Mnemosyne. We end up thinking of a memory as a record.\textsuperscript{35}

Roman proceedings were essentially oral, but this tradition changed, as can be seen, from the 13th century, with the 1,216 Decree by Pope Innocence III\textsuperscript{36}, that established the canonic code of the principle of writing - quod non est in actis non est in mundo. In fact, the principle of writing in proceedings, which then showed the longing for safety and stability in the proceedings, over time resulted much more in the distancing from reality, the crystallization of the imminent dynamics of the world, rather

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\textsuperscript{34} The concept of hyper-reality was formulated by French sociologist Jean Baudrillard, from Borges’ fable about the cartographers of the Empire Who draw such a detailed map that it covers exactly the whole territory that was mapped. “Today abstraction is not a map, of the duplicate, of the mirror or of the concept. The simulation is the simulation of territory, of a referential, of a substance. It is the generation of models of an actual without the original or reality: hyper-real (...) The real is produced from miniaturized cells, matrices and memories, from models, from command – and can be reproduced an undefined number of times after this. It no longer has to be rational, because it no longer compares to any instance, ideal or negative. It is only operational. In fact, it is not the real, since it is not involved in any imaginary. It is hyper-real, the product of synthesis irradiating combining models in a hyperspace without atmosphere. It is only operational. In fact, it is not the real, since it is no longer involved in any imaginary.” Cfr. BAUDRILLARD, 1991, p. 8

\textsuperscript{35} Cfr. LÉVY, 2009: [http://caosmose.net/pierrelevy/nossomos.html](http://caosmose.net/pierrelevy/nossomos.html)

\textsuperscript{36} Cfr. GUDEDES, 2003, p. 23
than anything else. We moved from the “lettres passent témoins” to the then dominant “temoins passent lettres”\textsuperscript{37}.

The reality imprisoned in the writing of the proceedings is a static reality, resulting from the medium used and conditioned by it, that is, paper. In the electronic medium, what can be recorded is not actual reality, but digitalized, codified and virtualized reality, that is, ‘hyper-realized’.

The ‘hyper-real’ is not a representation of the actual, but its presentation, translated into binary language, bits; it would be better to think in terms of transpresentation of the actual, simulating the actual, since the proceedings themselves are a performance, a show. The records are already a representation of this performance, that is, the representation of representation, the precession of the simulacrum\textsuperscript{38}.

From one point of view, it is necessary, therefore, to align the records to the order of social, concrete reality, because, in this way, hyper-reality brought into play by the new technologies of proceedings can insert us into a chain of oniric and virtual realism. In the same way that the culture of paper imbues in us a frame of mind of security and formalism of writing, with the loss of gross phenomenality, virtual proceedings can also move us away from reality because virtual reality tends toward simulacrum.

The resurrection of the principle of orality in the 19\textsuperscript{th} century had the objective of recovering the actual truth in the proceedings, which had been distanced by the regime of writing. Also, the idea was to seek the lost celerity. Orality meant, therefore, the search for actual truth, associated to procedural agility. The limitation of the medium meant that it occurred through rigid schemes of representation.

In a different way, in electronic proceedings it is possible to soften – but never exclude – representation. It is possible to present the representation of witnesses and even a performance of the reality of the records through images and sounds. In summary, the principle of hyper-reality, different from orality, which was translated in the trinomial: actual truth-representation-celebrity, seeks the virtual-actual truth through presentation, with the substrate of instantaneity, in real time, on line - rectius: on network.

\textsuperscript{37} SANTOS, 1970, p. 41

\textsuperscript{38} Baudrillard formulates the concept of simulacrum, that is, the simulation that no longer takes the actual as its basis; the actual is only a reference, a virtual reality. The reality show is a hyper-real model, of a simulacrum that emancipates and disconnects from the commitment to reality. The simulation – simulacrum – tends to precede the actual (the real). Cfr. BAUDRILLARD, 2003, p.8
Finally, electronically reconstructed hyper-reality exponentializes orality, not only in the hearing, but, above all, in judicial hermeneutics. The judge may decide orally with the parties, in a more direct and interactive way, immediately correcting any material imperfections and mistakes. The link between feeling and speech is greater than in writing. The spoken sentence is more concise and felt, more of a sentence.

4.5 The Principle of Interaction.

In paper proceedings, one of the most classical principles raised to the level of the constitution in Brazil, is the principle of pleading and counter-pleading. Practice has shown, however, that this principle, in its classical form, has served much more to the lack of rights, to the procrastination of proceedings, than to the assurance of rights of citizens. The millions of paper proceedings running through the courts speak for themselves.

It is necessary that the principle of pleading and counter pleading should be updated so that it does not continue to be used abusively. The already quoted saying that ‘paper accepts everything’ indicates that the principle of pleading and counter-pleading can be distorted and lose its noble purpose. As with any other right, it is not absolute and should be confined to certain limits.

Electronic medium may offer the opportunity to move to a kind of upgrade of the principle of pleading and counter-pleading, maximizing it, making it more immediate, instantaneous, in real time, that is, making it interactive.

Virtual proceedings allow us to overcome the old linear, segmented and static pleading and counter-pleading, where the deadline becomes the main drive, transforming from time for defense into time to find and excuse and hide the truth.

We may imagine a more intense, extensible pleading and counter-pleading, in real time, making everything more credible, authentic and instantaneous. Through linear, sequential departmentalized stages, it becomes a mechanical, manicheistic and artificial pleading and counter-pleading, since the essence of the principle is not even to contradict, but the pure possibility of participation in the proceedings with equal opportunities.

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39 Cfr. FAZZALARI, 2006, p. 119
40 Cfr. GONÇALVES, 1992, p. 127
With the virtual world in the records, everything is more instantaneous, the possibility of truth is wider, defense is wider, that is, participation is much wider and exponential.

This hyper-textual, hyper-real, intermediatic, immediate, non-mediated and participatory pleading and counter-pleading becomes much more interaction than mere contradiction. Interaction means a change of scale, a qualitative transformation in relation to linear and segmented contradiction. Interacting is contradicting and participating in real time, with greater synergy and authenticity.

Contradiction satisfies itself with mere equal participation and is reduced to a mere procedure, without any true commitment to reality or the truth; it is pure form. The principle of interaction is, therefore, a plus in comparison to traditional pleading and counter-pleading, since it also incorporates a substantial aspect of commitment to truth and virtual reality.

Finally, the principle of pleading and counter-pleading is more linked to procedural, competitive democracy, while the principle of interaction results from a new political, participatory and collaborative view.

4.6 The Principle of Instantaneity

In proceedings time is a crucial issue. The principle of celerity appears in all the handbooks. Constitutional Amendment 45 raised the issue of the reasonable duration of proceedings to constitutional status, but the hard reality in the courts is the direct opposite.

Obviously, electronic media makes everything much faster. Connection draws near, interaction, hyper-reality and intermediality dynamize, immateriality flexibilizes, that is, everything in the electronic proceedings conspires to maximize celerity.

Through virtual proceedings, mediation is drastically reduced. The lawyer, or the interested party, can take the pieces and evidence directly from the records. There is no request for individual examination of the proceedings, because they are available to the parties 24 hours a day. There is not necessarily a conclusion for the judge, since the

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42 Cfr. McLuhan, 1969, p. 91
judge has immediate and non-mediated contact with the records in real time with the parties.

Agility is such that there is already jurisprudence dealing with the early opposition of appeals requesting clarification of a court decision, which is published on the Internet, but which takes time to appear on paper.

Another interesting aspect is that electronic proceedings break with the linearity of page numbering. There is no numbered sequence of pages, but a flow – workflow – of the proceedings, which is not necessarily linear, but conducted from procedural events.

In summary, virtual proceedings are online and on network proceedings, which leads to instantaneity, even before mere celerity. Instantaneity is more alive and interactive than the worn and inefficient principle of celerity of the paper proceedings.

4.7 The Principle of Deterritorialization

The dematerialization of the proceedings also dematerializes the idea of forum and judicial circumscription. The BACENJUD system in Brazil is proof of this. Before this, in order to seize funds in a bank account through a court action outside the territorial limits of the judge’s district, it was necessary to issue a rogatory letter. Now all he needs is to log-in and to have a password in order to freeze accounts and financial investments anywhere in the country. The new INFOJUD and RENAJUD agreements open the same possibilities.

Non-penal summons is another example, since it is already possible to proceed to the electronic notification of an individual and of a company, even if they are outside Brazil, it being necessary only that they are enrolled and the proceedings are accessible over the Internet.

The concept of deterritorialization was formulated by philosopher Gilles Deleuze and psychoanalyst Felix Guattari and is a bit more complex than it might appear. The philosophy of Deleuze and Guattari is described by the authors in O que é a filosofia?, as a geo-philosophy. According to them, the subject and the object are never the originators, founders, but they are derived, resulting and they do not provide a good

approximation to reasoning, since reasoning is not a thread between to concepts. Reasoning is a double articulation\(^{44}\) between ‘earth’ and ‘territory’.\(^{45}\)

The earth is the plateaux – the plane of consistency and immanence that does not presuppose any transcendence. But on this plateau there are phenomena of ‘stratification’, which are beneficial in one aspect, but unfortunate in many others. The territorial strata block the overland escape routes, imprisoning their intensities and virtualities to established territories. Territory is a trap, it works like a black hole that seeks to detain everything within its reach\(^{46}\). Territory is the demarcation of land, of power, a limit, a border on thinking.

Double articulation of thinking occurs through ‘deterritorialization’ and ‘reterritorialization’, that may be relative or absolute, because Deleuzean thinking and the thinking of pragmatic prudence, of reason that recognizes its limits, and which can no longer be naïve. Deterritorialization includes a movement of territory towards earth. Deterritorialization in loco exceeds the territory and becomes the movement of the lines of escape that coincide with nomadic movements. Reterritorialization is the other face, that is, the movement toward the territory, demarcation of power.

On the other hand, the doctrine indicates the idea of an internationalization of virtual material law, as happen in outer space or on the sea floor. There are those who say that maritime law would be the ideal dogmatics to serve as the basis for electronic law. It is worth saying that the idea of navigating on the Internet reinforces the linguistic image of this theory.\(^{47}\).

\(^{44}\) The ‘double articulation’, the ‘double clawed lobster’, the ‘double bind’ Cfr. DELEUZE and GUATTARI, 1997a, p. 54, are the terms from and typical of Deleuze and Guattari.

\(^{45}\) Cfr. DELEUZE e GUATTARI (1992-1997) p. 113

\(^{46}\) Cfr. DELEUZE e GUATTARI (1995) vol. 1, p. 54

\(^{47}\) Cfr. RORHRMANN, 2005, pp. 27-33
The principle of deterritorialization in the sphere of electronic proceedings means, therefore, much more than the mere transposition of territories and jurisdictional districts and even jurisdictions; it means the fluidity of the effectiveness of rights that can no longer be simply contained by the material limits of physical space. The longa manus of the judge dematerialized becomes more extended, connected.

5. Conclusion

Therefore, it is expected that the operators of proceedings are able to learn with the mistakes and the inefficiency of traditional proceedings and do not lose the phenomenal opportunity catalyzing the so-called network externalities to benefit the social effectiveness of people’s rights.

The electronic proceedings move in another order, different from the written tradition, since they translate the combination of the immaterial of the electronic, with the reticular and telematic aspect of the new technologies of communication, information and combination—rectius: connection.

Electronic proceedings have the potential to be much more than the mere IT infrastructure for traditional proceedings. Also, it is not the mere digital judicial procedure, nor the mere court records on digital paper. The new technologies of information and communication radically transform the nature of traditional proceedings, which are marked basically by the separation of the court records from the world. Electronic proceedings are, above all, a network process which enable it to benefit, at the same time, from collective intelligence, the law of abundance, growing income and the synergy of interaction in real time.

We cannot follow the path of mere digitalization of the records, in the logic of the scanner, but we must begin a new process and not only a new procedure. To

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48 The following decision by the Brazilian Supreme Court is relevant, still based on paper proceedings:

PROCEEDINGS : CC 66981 UF: RJ – STJ – TRANSMISSION OVER THE INTERNET OF PORNOGRAPHIC IMAGES INVOLVING CHILDREN AND ADOLESCENTS. COMPETENCY ESTABLISHED BY THE SITE OF ILICIT PUBLICATION. 1. As understood by this Court, the crime foreseen in article 241 of Law 8.069/90 occurs at the moment of publication of the images, that is, when there is the issuing on the Internet of photographs of pornographic content. It is irrelevant, for the purposes of establishing competence, the site where the person responsible for the server of access to the virtual environment is to be found.

digitalize means to relieve the electronic procedure from the distorted logic of the paper, written proceedings.

The fear is that we should fall into the mere computerization of inefficiency. We cannot miss the opportunity to take advantage of the arrival of electronic procedures to bring about a revolution in proceedings, which so far is no more than an unfulfilled promise. In other words, it is important to take advantage of the dematerialization of the court records to try to dematerialize the entrenched biases of the culture of writing in proceedings.

The old saying that ‘paper accepts everything’ brought the transformation of legal security as dogma, in this way losing the actual truth and, consequently, the material justice of decisions. In the immaterial world, the monitor will accept even more, therefore, it is necessary to check paranoiac raptures for virtual security.

The concern should move from security, thought of as mere stability, to the idea of preservation of intimacy and privacy in the electronic world, that is, it is more important to assure these constitutional guarantees to citizens than an excessive concern with technological security, since the possibility of redundancy is the great key to security and integrity of electronic files.

On the other hand, not only the technologies already available should not be ignored, but we should be alert to those which are in the pipeline so that electronic proceedings do not start their lives obsolete.

We must insist: electronic proceedings cannot be considered mere standard proceedings – which, in the final analysis, is a mere migration (including the vices) of writing to the new virtual proceedings. It is essential that electronic proceedings should be a relational, semantically user friendly database, with a “referential integrity”, not a database of segmented documents.

On the other hand, it is necessary to avoid an obscurantist stance, a sentimental appeal to the specificities of human dignity. The essential in electronic proceedings, the potential of emancipation that it carries, is precisely the fact that it is a network proceedings. Not a network of wires and circuits, but a network that connects people,

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50 The expression was used by Magistrate and Law Doctor Antônio Gomes de Vasconcelos, in the Workshops of the 1st Minas Gerais Conference – Digital Justice and Labor Law, held in Caxambu, State of Minas Gerais, Brazil, August 21-23, 2008.
human beings: the judge, the parties and human society. It is not awe of technology, but
the political, cultural, economic and sociological potential of the network.

Paper proceedings are the very incarnation of the separation between actors in
the proceedings and in the world. What is not in the court records is not in the world. It
is an individual process, isolated from the world. Therefore, what is necessary is the
development of a legal technology to deal with new proceedings that will connect the
court records to the world. To use the same procedural principles of the paper procedures
would be the same as to operate the computer using a native club. If we believe that a
sheet of paper has the same political and social effect as a monitor on the network, a
computer interface, we are losing the historical opportunity to make the long overdue
revolution in the judicial proceedings.

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