

Digital Footprints

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When we think of the concept of Digital Footprints, we have a wide scope to examine. For my presentation I want to focus on the lasting impact of what we do with information that reflects our reality and life. Digital footprints relate to information that is available online about us, personal messages and electronic communication. Being vulnerable is a reality that can happen when digital footprints are terribly managed.

According to Micheli, Lutz and Buchi (2018) digital footprints come from data that is generated by our own doing. Hence, we are a major factor in the ability of digital footprints to exist. The behavior of others is something that we have less control of but the behavior of ourselves we have absolute control over.

Privacy concerns and data protection arise when we consider our digital footprint. For many lawyers who regularly post comments or views online, once a Judicial appointment happens they suddenly recognize that some of their views that are now in the public domain digitally, could become embarrassing or detrimental to engendering public confidence and/or trust in their ability to be independent or impartial. Should they then attempt to remove what has been in the public domain or should they allow these digitally verifiable statements remain as part of their public record of who they are and potentially bring embarrassment to the judiciary? These are questions that judiciaries grapple as with most judicial application processes there is a section that refers to disclosure of anything that may cause consternation for the judiciary if you are appointed.

On another perspective of digital footprints in the world of evidence having information that easily verifiable and credible becomes more attractive for courts to consider. Without getting into the wrangling of admissibility of evidence and presuming the material that is digitally posted is admissible evidence, it becomes more challenging for a defendant to attack the veracity of a claim on the digital footprint as the record of such is credible and lasting. Digital footprints therefore provide courts with an avenue for which it may exercise its discretion in being able to improve access to justice. In looking at the 21st century experience of the judiciary when we consider that less than 35 years ago the use of computers in tertiary education was a luxury and not readily available, it must be acknowledged that digital footprints provide a real benefit that courts have never had at their disposal in human history.

When we examine case management and the ability to become more efficient in procedural justice which is the aspect of case management that is most likely affected by court staff and support services digital footprints help to identify where the prospect of improvement is more likely. Within the case management system we could argue that there is substantive justice which is solely within the purview of the Judge or Magistrate which is the aspect of the decision making process which is jealously guarded under the independence of the judiciary. However, in order for the substantive justice to occur the procedural justice must take place where the matter is filed with the court and it is progressed in the judicial system. Admittedly, while Judges and Magistrates may have a significant role in this procedural justice, court staff historically could have adversely affected case management where files are misplaced or documents are missing thereby creating delays in the matter being disposed of in a timely manner. Digital footprints from a case management system that allows Judges and Magistrates to identify where the bottleneck is in the procedural justice process can positively impact case management.

We also know that digital footprints can be misapplied to perpetrate Fraud as well as do harm to judicial institutions when matters such as Hacking occur. In the Papua New Guinea Judiciary, we had the misfortune of being the victim of a ransomware attack in 2019 where hackers got control of our IT system resulting in the Judiciary not being able to access its email and other data for a few months. Fortunately, the Judiciary's IT team responded in a such a way as to mitigate this problem and have since put in place systems that minimize the potential for recurrence. The information from the digital footprints in the hands of people who were not a part of the judiciary could have potentially undermined public confidence. However, the Judiciary's full and frank disclosure on what happened and its swift counter measures to thwart the criminal efforts of a few unknown misfits preserve the judicial integrity and ensured any further loss of data that could have happened.

Whenever you use an online service you leave a digital footprint. If you are using whatsapp or making a debit card payment at a store, you are building a digital footprint that can inform users about your behavior over a period of time. Kellitz and others (2019) argue that the judiciary today has to be ready for more risky dynamics of an uncertain world when it comes to data management. They examined what happened after the civil war in Kosovo where so much data was lost which included case files and registers. When your court system disappears and in the absence of alternative back up, storage or avenues inclusive of the cloud and other capable mechanisms where is the digital footprint that is now an essential part of the court's work. Cybercrime and its risk are real and there are attempts to hold many courts hostage around the world. While in PNG in 2019 we had a ransomware attack, so did courts in the USA specifically in Georgia where the computer system experienced cyberattack (Murdoch, 2019 or in

Philadelphia where the court's email accounts and website were shut down due to minimize the impact of a virus (Shaw, 2019).

Managing your digital footprints as Judges and Magistrates is appropriately captured in the "Non-Binding Guidelines on The Use of Social Media By Judges" published by the United Nations Office on Drugs and Crime in 2018. This document is readily available at no cost by a google search.

According to McDermot (2018) even when you delete information that was provided by you through the internet it is never truly withdrawn or taken away from the internet. It is a reminder that we must be sensitive to what we put in the public domain. And while Judges and Magistrates are normally the least likely to be unaware of this reality, it is a noteworthy reminder. Earlier in this year the Papua New Guinea Centre for Judicial Excellence (**PNGCJE**) in collaboration with the Council of Europe held a Cybercrime and Electronic Evidence workshop for Judges. This workshop provided a pragmatic approach in looking at Papua New Guinea's cybercrime legislation with a view of providing more insight into the application of the legislation in the courts and evidence gathering inter alia along with international best practices in other jurisdictions including in Europe. The fact that such Judicial Education and training took place in 2021 when if we examine the evolution of technology in our global community, such a reality would not have been possible thirty years ago or even twenty years ago. My proposition to you is that changes that are happening in our world dictate that we must be more open minded, and practical in how digital footprints are here to stay in the courts, in governments and in daily life.

I am not suggesting that all of you Judges and Magistrates go and sign up for an Instagram, Facebook or Twitter Account. However, I am proposing that all of us become more informed about how digital footprints can assist us in our daily work activities to become more efficient and effective. In the Caribbean, I note

that the Council of Legal Education is now conducting a survey to determine whether to develop an online Legal Education Certificate program for the next generation of Lawyers and Practitioners in the Commonwealth Caribbean. Such a proposition would mean that an entire training program for lawyers in the Caribbean region would be fully digital with a footprint that is not retractable. In the Pacific Islands, we have court staff in Papua New Guinea and in the 14 other Pacific Island Countries who are currently doing the one year Certificate Course in Justice taught by the University of the South Pacific (one of my alma maters) which is fully online with no face to face component. These are court staff who support Judges and Magistrates like you to effect the proper administration of justice in their jurisdictions. Their learning program has created a digital footprint that is not retractable.

The PNGCE and Pacific Centre for Judicial Excellence (PCJE) which is a subdivision of the PNGCJE with focus on Judicial Education and Training for Pacific Island Courts are now implementing a Learning Management System which upon completion of our implementation phase will assure that we have a digital footprint that provides hundreds of relevant courses, webinars and podcasts which can be accessed by Judges, Magistrates, Court Staff and the Law and Justice Sector of the Pacific Islands and eventually the entire Commonwealth on areas of substantive law, procedures and practice, general knowledge, skills and awareness that ensure that we have a bespoke experience created.

We see digital footprints as the reflection of what is and we are even more aware of the significance of having digital footprints that add value and support the rule of law in improving access to justice. From my perspective, this discussion is not just an academic exercise to test the mettle of learned people who desire intellectual gymnastics as a form of a mental workout. As I recall my days in law school, one of my professors told us that “law is not for the intellectually deficient”. That same Professor also said, “we training you so that

you can make lots of money”. I am not quite sure that most Judges and Magistrates and practicing lawyers would agree with that last quote. However, I think most would agree with the former quote that law is not for the intellectually deficient and digital footprints and the pathway that we lead in building our footprints require thought and consideration because it is not retractable.

The future of judiciaries are intertwined with the digital footprints that we create, evaluate and pass judgement on. It is essential that all Judiciaries examine where they are in the spectrum of digital footprints in terms of are they markedly ensuring that what is reflected in domains in this era of digital transformation is consistent with values that uphold the rule of law. Moreover, to the extent that access to justice which supports the notion that the rule of law prevails in a just and fairer society is emboldened by Judiciaries is the expectation that the people we serve in our respective roles will be better off for it and public confidence in our judiciaries will be enhanced and preserved.

Thank you for listening to my remarks. It is always a pleasure to present to this august body of great men and women that reflect the strength of justice in the Commonwealth.

References

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