

VIII International Summer School on Cyber Law

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## The electronic discovery (*e-discovery*)

# Law and Technology

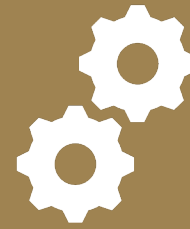




# Law and Technology, the diverging **goals**:



**LEGAL RULE** - RESOLUTION OF  
SOCIAL CONFLICTS



**TECHNICAL RULE** -  
TRANSFORMATION OF THE WORLD


Law and Technology have diverging **efficiency** paradigms:



**LEGAL RULE** - SOCIAL PEACE  
COOPERATION



**TECHNICAL RULE** - WASTELESS  
USE OF TIME-ENERGY



## Electronic discovery of evidence (e- *discovery*)

- refers to any method of **searching**, **locating** and **obtaining** electronic data and information for use as evidence in legal proceedings.

# Evidence



Serves to create a firm **belief** in a given fact;



Crucial importance as regards the settlement of **disputes**;



Particularly noteworthy  
in the context of  
**Procedural Law.**



# USA



*Federal Civil Procedure Rules* were amended in December 2006 to include the use of digital evidence;



The Sedona Conference - *The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*;



Principles and best practice recommendations.

# Europe



**European Regulation 910/2014** repealed Directive 1999/93/EC in order to establish a common legal framework, **directly applied in all Member States**;



A common framework of **documents and electronic signatures** admissible by the Court has been established;



**Article 46** of European Regulation 910/2014 - **the legal effects of electronic documents**: electronic document can't be denied legal effects or admissibility as evidence in legal proceedings simply because it is presented in electronic format.

# Portugal



We do not have the legal prevision of digital evidence, nor the express prevision of the electronic document.



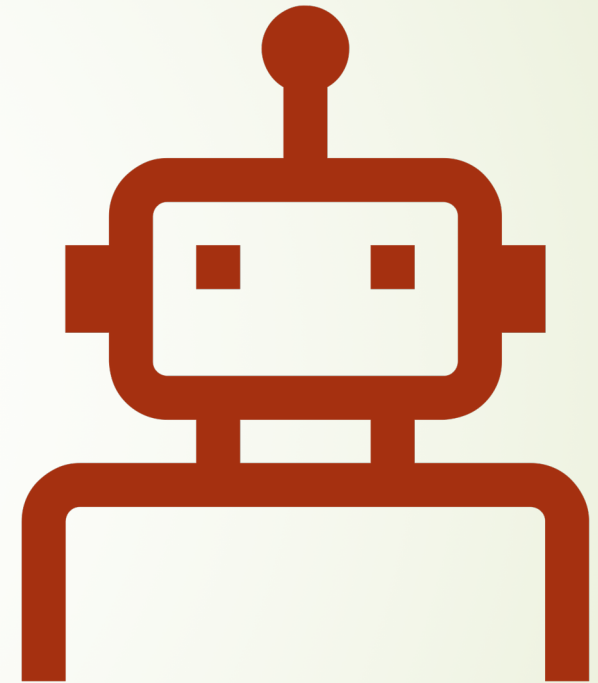
The Portuguese Code of Civil Procedure (article 362) has been drafted for the use of paper documents only.



What about the electronic documents?...

# Conclusion

- The legislation foreseen for obtaining digital evidence reveals **defects and omissions**;
- The electronic discovery of evidence is still an **area in consolidation**;
- Implications go far beyond merely **technological** aspects, also raising issues of a **legal, political, security and privacy** nature, which have not yet been resolved.







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Thank you!  
Спасибо!