Chapter 7
Legal and Organisational Issues in Courtroom Technology Implementation and Institutionalization

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ABSTRACT

Information technologies in courtrooms have served systematic and speedy justice dispensation since the start of the last decade. They brought forward significant changes to court operation around the world. However, during this period a variety of technology implementation and institutionalisation issues also surfaced. This chapter aims to discuss the legal and organisational issues by focusing on the case of Malaysian courts. It is advanced with the presentation of growing phenomenon of courtroom technology implementation and institutionalisation in a big picture, followed by the current scenario of the case of technology implementation projects in Malaysian courts, the E-Court, and E-Shariah. This chapter also discusses the different perspectives in technology institutionalization through a five-step technology implementation/institutionalisation process.

INTRODUCTION

Courtroom technology is increasing in scope and complexity, indeed, those opinions stating that computerization in the courtroom constitutes a threat are fading (Galves 2000). The standard of living in many countries is high and this has been brought about by the Information and Communication Technologies (ICT). Court leaders and judges believe that ICT plays a key role in improving the current justice systems. In fact it is the catalyst to radical change in court performance (Bhatt 2005; Cranfield School of Management 2011; World Bank 2011). Literature reviews show the shift from the traditional case management system to applications developed to support electronic filing, electronic case management, electronic data interchange and e-justice (Langbroek 2009). Today

most countries around the world have already embarked on e-justice, introducing various types of electronic court case management applications.

'E-justice' is defined as the use of Information and Communication Technology in the judicial system to improve the services rendered to the users (Ibarrola & Liz 2012). The use of technology in federal, state and international courtrooms has been rapidly growing over the past fifteen years (Fabri & Contini 2001; Lederer 2005; Saman & Haider 2011; Wiggins 2006). Most lawyers, judges, legal administrators and support personnel long ago adopted word processing, electronic legal research, time and billing programs as well as varying forms of case management software. The following systems are widely employed in courts: video conferencing, digital documents, photographs and recordings, computer animation and simulations, and videotaped evidence through the most sophisticated integrated case management systems, audio video court hearing recordings, automated transcribing systems, queuing systems and online case registration and filing systems (Saman & Haider 2011). The evidence has overwhelmingly shown that employing immersive virtual environment and interactive reality adds significant value as a simulation of experience to enhance courtroom practice (Bailenson et al. 2006).

CURRENT STATE OF COURTROOM TECHNOLOGY IMPLEMENTATION AND INSTITUTIONALIZATION

In the United States, as early as 1998, the courts in Los Angeles and Indianapolis had already embarked on integrated high-technology courtroom programs (Lederer 1998). In April 1998, the 'Courtroom 21' project verified 8 qualifying state facilities and 32 federal ones. Among others, these consisted of the 'virtual trial', virtual law firm, online traffic fine payment, remote witness testimony, presenting evidence electronically and remote forensic-expert-laboratory testimony.

In Europe, all EU countries have case management systems of some kind in their courts and prosecutors' offices but their functionality and performance varies (Contini & Lanzara 2009; Fabri & Contini 2001; Lanzara & Patriotta 2001). In criminal cases in Norway's and Finland's Supreme Court, the case management system covers the whole workflow of a case, from prosecution, connection to the police, and then to court decision, while other countries are developing or upgrading their own e-justice system. This includes Austria, whose main goal is to redesign the case management system so that a single application spanning over 40 proceedings is operating. Italy's e-court system is currently at the test stage and Spain it's the Ministry of Justice and Autonomous Communities is developing various initiatives. The Swedish case management system (MAHS) is implemented in all 120 district courts and county administrative courts (Contini & Lanzara 2009; Fabri & Contini 2001). Other European countries that currently employ e-justice are Italy (Contini & Cordella 2007) and the Netherlands (Reiling 2010; Schmidt 2007).

At the same time as having technology in court administration it is paramount to having written policies and standards which govern the use of those technologies, to ensure uniformity of systems used in all courts of the same jurisdictions. This standardisation will ensure the smooth running work process of courts. The Michigan Supreme Court established and consistently updated the Michigan Trial Court Case File Management Standards that encompass all types of records, including records in electronic media (Michigan Trial Court Case File Management Standards 2011). This standard covers the development as well as layout and design of Michigan court case file management. In addition to the courts, lawyers have used technological equipment to present their cases before courts for more than

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