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Access to judicial information via the Internet in Latin America: a discussion of the experiences, trends and difficulties.

Judicial branches in the Latin American region are conducting an extensive reform. The principal causes which lead to this reform are: overload and congestion, excessive delays and lack of transparency. The judicial information management represents one of the pillars of the reform. Once the judicial information has been disseminated via Internet the next issue to be considered is how to manage the access policy.

With this change the judiciaries launched a myriad of services via Internet: access to case management, access to massive databases of case law (where practically all the decisions are included), and recently other creative services such as viz. criminal records (particularly related to sexual offences), cases already filed, names of individuals who failed to pay child support, names of imprisoned convicts, names of fugitives of the law, lawyers and notaries suspended, crime victims, personal bankruptcy and successions, law notices.

Depending on what the information pertains to, there are different ways to access it, which vary from one country to another. This variety goes from free access to the judicial information (e.g. Brazil, where the only limit is having to use the name of the employer in the search engine of labor cases) or child support cases in Peru; to registered users (e.g. child support debtors in Argentina); or to all interested persons in criminal records —by paying— in Peru. Meanwhile in Venezuela access to case management is restricted to the parts and their lawyers, in Argentina (province of Chubut) every lawyer can access to every case. However, in most of the countries the access is open free and unrestricted when having the case identification number.

The balance among the right to access and other fundamental rights (mainly privacy, right to defense, and presumption of innocence) has a wide set of solutions, which could be on one extreme full anonymization of case management like in Mexico (Nayarit state) and on the other extreme displaying all the information —including the victims' names even if they are minors— in Mexico (Tabasco state). A controversial subject is if the right to access has to be applied to all judicial databases of cases: e.g. access is limited in the courts of Rio Grande do Sul state (Brazil) and civil courts in Buenos Aires (Argentina), in other countries the access (download) is fully allowed: e.g. Guatemala and Mexico where there are private companies that reorganize this information and sell it to paid users (subscriptions). In Argentina and Costa Rica the name of voters are accessible through complete databases.

The limited access to law notices (“edictos” or “editais” that compromise the right of

defense) in the region is contradictory compared with the trend of free access. Only in Ecuador there is a search engine with free access (sometimes registered users) to law notices, and recently in Brazil, the 11.419 Act created a website which enables access to all law notices in all states (Diário da Justiça Eletrônico). In some states of Mexico, law notices can be accessed by date of edition at the judicial websites. A great number of countries publish law notices in private newspapers.

The most complex issues are arising in Brazil. Based on the high level of congestion and delays the 11.419 Act established the electronic dossier and a full computerization of all judicial process that must be implemented in only one year.

All these processes are taking place in a complex scenario: legal gaps within the rights of access and personal data protection, social claims for a more transparent, efficient and speedy justice system, and an growing number of loaded cases (as an example, approximately 14 millions cases are filed annually by the trial courts in Brazil). In addition, experiences and experiments occur isolated and intermittently.

This presentation intends to analyze the trends, the adverted risks and to discuss best practices and further recommendations.