

# Towards a Methodology for Assessing the Legal Risks Associated with Cyberjustice

Doing Justice: Dispute Resolution in the Courts and Beyond  
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## Opening statement

*As technologies are being built and put to use, significant alterations in patterns of human activity and human institutions are already taking place.*

Langdon WINNER, *The Whale and the Reactor – A Search for Limits in an Age of High Technology*, University of Chicago Press, Chicago, 1986, p. 11.

## Presentation outline

1. A New Medium for the Justice System
2. Cyberjustice
3. Risk
4. Taming Risks: An Assessment Methodology
5. Possible Future Endeavours

## 1- A New Medium for the Justice System...

☞ A system based primarily on the use of paper and the physical presence of all parties.

- ☞ Court cases are getting longer, more expensive, and more complex
- ☞ The current system impedes the circulation of criminal justice information among various stakeholders

☞ Access to justice and public security can and should profit from the opportunities of information and communication technologies (ICT).

☞ “[L]aw, an institution that has relied greatly on print, writing, and the spoken word, is highly vulnerable to the influence of new means of communicating information that possess very different qualities.”

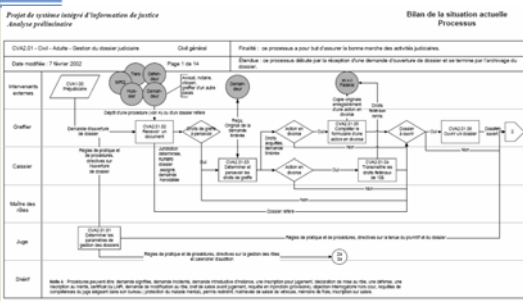
Ethan M. KATSH, *The Electronic Media and the Transformation of Law*, Oxford University Press, New York, 1989, p. 4.

## 2- Cyberjustice

☞ The term cyberjustice refers to the integration of information and communication technologies to dispute resolution processes – whether they be judicial or extrajudicial.

☞ In its broadest sense, cyberjustice implies the networking of all stakeholders in the informational chain for judicial cases.

☞ This is what is referred to as an *Integrated Justice Information System*.



## 3- Risk

☞ “Risks essentially express a future component, [...] based in part on the prolonging of currently calculable damages into the future [...]”

☞ Risk is thus a “latent side effect”, a “not-yet-event as stimulus to action”.

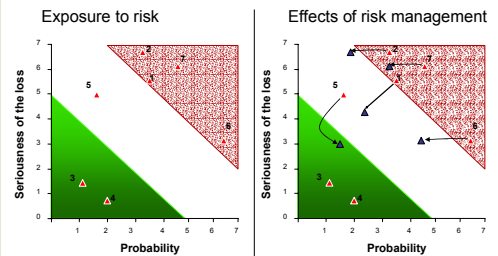
Ulrich BECK, *Risk society – Towards a New Modernity*, SAGE, London, 1992, p. 33-34.

“There are instances in which the invention, design, or arrangement of a specific technical device or system becomes a way of settling an issue in the affairs of a particular society.”

Langdon WINNER, *The Whale and the Reactor*, University of Chicago Press, Chicago, 1986, p. 22.



⊞ Unlike *danger*, “*risk*” is transactional: it can be managed in order to become acceptable.



Suzanne RIVARD, Conférence – Prix Gérard Parizeau, École des Hautes Études Commerciales, Montréal, April 19, 2007.

#### 4- Taming Risks: An Assessment Methodology

- ⊞ It is possible to tame the risks associated with cyberjustice systems.
- ⊞ Identification of the underpinnings of legal risk
  - ▶ Our system’s rationalities: the values and principles on which it relies
  - ▶ Legal and constitutional constraints
  - ▶ Legal impediments that are currently invisible

- ⊞ Privacy, presumption of innocence, equality of arms, right to a fair and public hearing, judicial independence...
- ⊞ Rationalities whose components are generally well documented in case law or doctrine.

### Identifying zones of friction:

- ▶ Pairing the technical characteristics of cyberjustice systems...
- ▶ ...with identified rationalities and their components.

- Friction between a rationality and a technical feature will indicate a risk...
- ... and we should study whether present institutions are equipped to handle it.

- It could then be necessary to reconsider that rationality in an electronic environment...
- ... or to adopt measures aimed at protecting said rationality.
- Such analysis is not only juridical, but multidisciplinary.

## 5- Possible Future Endeavours

- Multidisciplinary research
  - ▶ The idea of justice is plural and extends far beyond law.
  - ▶ Hence the necessity of a reflection on the cultural, political, sociological, psychological and historical aspects of justice...
  - ▶ ...and on related impediments to the implementation of cyberjustice systems.

### Re-engineering of proceedings

- ▶ Go past the modelling and the simple reproduction of actual procedure.
- ▶ Rethink procedure – a neglected area of research – while taking into account the features offered by the new medium...
- ▶ ... in order to fully use the ICT' potential.

## Karim Benyekhlef

Professor  
Director, Centre de recherche en droit public  
Faculté de droit  
Université de Montréal

[karim.benyekhlef@umontreal.ca](mailto:karim.benyekhlef@umontreal.ca)  
Telephone: (514) 343-7451  
Fax: (514) 343-7508

Thank you!