

REPORT OF THE SECOND STUDY COMMISSION
CIVIL LAW AND PROCEDURE
MEETING OF THE CENTRAL COUNCIL ON ZOOM PLATFORM
SEPTEMBER 11-12 (13), 2021

The topic for discussion in the Second Study Commission this year was: “How data protection rules are impacting on civil litigation”. We limited the Questionnaire to five questions and we sought short and concise answers from member representatives. We received 25 responses to the questionnaires. They were circulated to the member associations and are now accessible on the public website portion of the IAJ (www.iaj-uim.org).

For the purposes of the report to Central council we have reduced the members responses to principal conclusions. They are as follow:

1. The Commission firstly looked at the question of whether digital data was stored in the members’ jurisdictions. Not surprisingly, all members have stored digital data in their Court system. The basic difference between jurisdictions was how much was stored – those who have had a digital e-filing system have had to store and manage much more than those jurisdictions that are not as advanced in their digital transformation. It was noted that the Pandemic accelerated the amount of digital material being filed and stored.
2. The question of the length of storage time in each jurisdiction was canvassed. Most members presently store digital court information indefinitely. Some have legislation which determines what is to be stored, or not, and how. Some have limited storage parameters for some triaged material (between 10 and 25 years by example). Some have formal archival systems with specific rules and regulations concerning such data. Comments were made that in the future, limitations to the storage of digital data may be necessary considering the increased volume of material.
3. The Commission next explored the question of who has access to the court digital data. In this regard, the members differed. Some allowed full public access with some minor restrictions for sensitive information, based on the “open court principle”. Other members restricted access to judges, court administration, case workers, and the parties involved in any particular matter. A middle ground is found in some jurisdictions where some limited public access is allowed but most is kept private between the key parties. Comments were made by some regarding the issue of bulk access by commercial third parties and the fact that this issue is being studied.
4. The issue about digital data protection rules was explored. All jurisdictions had varying methods to protect digital data. The EU members, for instance, operate in accordance with the General Data Protection Regulations. Other members rely both on legislation

and common law rules and policies, privacy and confidentiality Orders of Court, regarding restricted access. Comments were made with respect to IT system protections that are also in place.

5. Finally, who bears the cost relating to the storage and protection of the digital data was explored. For the most part, the costs are borne by member governments, either directly through the respective Ministries of Justice, or indirectly through court administration budgets. It was also noted that fees collected for accessing data is used to cover digital storage and protection costs in at least one jurisdiction.

I would like to thank the Study Commission Vice-chairs, Mette Søggaard Vammen of Denmark, John Edwards of Ireland and Flávia da Costa Viana of Brazil, for their helpful and wise contributions to the work of the Commission during this past year.

The new Board of Directors of the Second Study Commission is composed of the following:

- President: John Edwards of Ireland
- Vice-president: Mette Søggaard Vammen of Denmark
- Vice-president: Flávia da Costa Viana of Brazil
- Vice-president: Kristine Eidsvik of Canada

Thomas E. Cyr
Canada
Chair, Second Study Commission