

The Impact of Artificial Intelligence on Digital Evidence

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Images and videos produced or modified through the use of artificial intelligence are no longer novel. Who hasn't seen the recent commercial, prepared by a French agency to advertise the Women's World Cup, where the images of female players scoring incredible goals were swapped for players from the French men's team? Not to mention the seemingly countless apps involving the use of AI for text, sound, image and video are launched daily and suggested by our social media networks.

If AI is already so present in our daily lives, there can be no denying the growing impact it has in the legal world, including the courts. The courts themselves have been equipping themselves with machine learning software and tools to facilitate their routines. A good example is the Justice 4.0 Program (Programa Justiça 4.0), launched by the National Council of Justice (CNJ – Conselho Nacional de Justiça), which proposes to implement the use of new technologies, including AI tools, by the Judiciary to ensure quicker, more effective and more accessible services through digital solutions that will automate activities and optimize the work of judges, public servants and lawyers.

The Labor Courts, which are the vanguard of Brazil's judiciary, were also pioneers in the adoption of new technologies. Since 2018, the "Bem-Te-Vi" system (named after pitangus sulphuratus, a small bird found in most parts of Brazil) has operated in case management in the courts, and uses AI to track filing deadlines and determine whether they have been met. More recently, the "Digital Evidence" Program (Programa Provas Digitais) was launched, also as part of the Justice 4.0 Program. This tool also uses AI to assist judges in connection with the production of evidence. The impact of AI on digital evidence could not be clearer.

Article 396 of Brazil's Code of Civil Procedure provides that the parties to a proceeding may use all lawful and morally legitimate means to prove the truth of their allegations. There can be no disputing the fact that the use of AI contributes to greater precision and strength in digital evidence, especially when compared to the fragility of other types of evidence, such as witness testimony.

Digital evidence is, in fact, a much-debated "hot topic" in the legal community. Some of the tools that have been used (and accepted) for the production of digital evidence in court are geolocation, social media posts, use of key words or tags, biometrics, data scraping, conversations in message apps, and e-mails, along with databank scans. There can be no doubt that a screen print of a WhatsApp conversation between the parties involved or a photo of them published on a social network has much greater persuasive power than simply hearing someone say they witnessed the event, especially since it is not unusual for the adverse party to produce a witness to assert the opposite. The photo and the screen print give concrete form to the age-old

saying "seeing is believing".

Nonetheless, while the existence of digital evidence is beneficial, in this era of AI and revolutionary technologies, use of such evidence requires caution on the part of both judges and lawyers. While the AI certainly contributes to the efficiency and effectiveness of the tools that produce the digital evidence used in legal proceedings, the fact is that AI can also be used to adulterate evidence to distort the facts. To take some of the examples used in this article, it is not difficult to image that what appears to be a WhatsApp screen print or image posted on social media is, in reality, the product of manipulation by AI, just as in the ad for the Women's World Cup. Who can guarantee that the image presented to the judge is a true representation of what actually occurred?

The conclusion seems to be that legal professionals have an obligation to make use of "all means permitted by law" – including the use of AI – to ensure that digital evidence submitted to the court is good and valid. In today's world, "seeing is believing" can also be interpreted as a warning.

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