

The Digital Trail: Picking Up Hansel and Gretel's Breadcrumbs and Presenting Them in Court

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SUBJECT(S): COMMERCIAL LAW

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This Note explores the various laws pertinent to the use of electronics, such as the Electronic Commerce Act, the Consumer Act, the Optical Media Act, and the Access Devices Regulation Act of 1998. In addition, there are four pending bills involving Anti-Cyber crimes that are also examined. The Note explains how these pieces of legislation can improve the dispensation of justice and how electronic evidence can be utilized.

The Note first tackles the Electronic Commerce Act and discusses the important provisions on electronic documents, electronic signatures, and acts punishable under the Act. The Note presents how these newly introduced provisions can be reconciled with existing laws. A survey of Philippine jurisprudence is also discussed to provide a better understanding of the development of laws involving electronic devices. The issue of the applicability of cellular phones as electronic evidence is also presented for the consideration of readers.

The Author points out the issues surrounding electronic evidence and how reliance on American Jurisprudence is required due to the dearth of Philippine jurisprudence on the matter of the use of electronic evidence. It is recommended by the Author that electronic material can be the subject of forensics if its relevant to a fact in issue and if a plausible reason for its collection can be given. There should be proof of relevance of the electronic discovery in order to enable courts to issue a subpoena for the production of evidence. Second, retention policies of electronic evidence should be reviewed to avoid its destruction and minimize tampering of electronic data. Third, proper authentication of electronic data is mandatory to protect each person's right to privacy. Finally, the laws and rules on admissibility of electronic evidence should be changed to answer the issues presented in this Note and the changes made to the law should ensure that it can adapt to continuing societal changes and developments.