

**A COMPARATIVE OVERVIEW OF THE (SOMETIMES UNEASY)  
RELATIONSHIP BETWEEN DIGITAL INFORMATION AND CERTAIN LEGAL  
FIELDS IN SOUTH AFRICA AND UGANDA**

**D Van der Merwe\***

**SUMMARY**

The present article focuses on the (sometimes problematic) relationship between digital information and certain legal fields. Most legal rules developed long before the arrival of the computer and the digital telephone, and these rules are now under considerable strain to adapt.

Digital information is rapidly becoming one of the 21<sup>st</sup> Century's most valuable assets. This raises the question as to whether or not the law is able to adequately protect this phenomenon against the many attacks being launched against it. The present article analyses certain legal fields in this regard, namely privacy, criminal law, and the law of evidence. The world seems suddenly to have woken up to the fact that digital technology might be a mixed blessing, especially as is shown by certain recent incidents relating to privacy in the USA. In order to obtain an "Africa perspective" the legal situation in South Africa is compared to that in Uganda (East Africa) against a background of multilateral treaties that might apply in this regard.

An important point to keep in mind while weighing up legal interests is whether the State may attempt to be both neutral umpire (by means of its judicial power) as well as one of the players who want to win (as the executive power, when government information is at stake). A number of recent incidents in which the United States government has been involved seem to indicate that this attempt to sit on two stools at the same time is likely to diminish respect for the government (and its regulatory efforts) amongst the general population.

---

\* Dana van der Merwe. B.Jur (UPE), LLB and LLD (Unisa). Formerly Professor in Public Law at the University of South Africa, at present Research Fellow at that institution. Email: vdmerdp@mweb.co.za.

A specific problem with enforcement consists of the international nature of infringements. The Internet knows no borders and this factor suggests that effective international co-operation is an essential prerequisite for the law to function adequately in an international context. The concluding of International treaties between groupings of countries is put forward as perhaps the most effective solution in this regard.

**KEYWORDS:** Computer crime, Computer evidence, Digital information, E-commerce, Espionage, Personal Data, Privacy, Military Intelligence, State Security, Treaties