

# Evolution of sports arbitration: from paper-based to digital evidence in football disputes

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**Abstract:** Digitalization poses many challenges to sports law, including the issues related to using digital evidence in sports arbitration. As one of the most popular sports, football has given rise to many sports controversies. Parties increasingly use digital evidence to prove their position, which requires arbitrators' correct and professional assessment. The paper aims to explore the challenges digital evidence poses in sports, specifically focusing on football. The research is primarily focused on the admissibility of digital evidence and hacked and leaked evidence, given football's susceptibility to data breaches. Applying comparative legal analysis and case study through an analysis of existing literature, legal frameworks, and case law allowed us to scrutinize a spectrum of digital evidence utilized by litigants to illuminate the admissibility standards adopted by arbitral tribunals. As a practical implication, the authors proposed practical guidance to stakeholders and adjudicators on managing and evaluating digital evidence in sports arbitration.

**Keywords:** Sports Arbitration. Digital Evidence. Case Law. Hacked and Leaked Evidence. Practical notes.

**Summary:** Introduction – **1** The concept of digital evidence – **2** Digital evidence in sports disputes: the issue of admissibility – **3** Digital evidence in sports disputes: the issue of hacked and leaked evidence – **4** Guidelines for the use and assessment of digital evidence in efficient sports arbitration – Conclusion – References

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## Introduction

Digitalization presents ongoing challenges to society, particularly within the legal sphere. Traditional paper-based proceedings are rapidly becoming obsolete,

with many jurisdictions transitioning to digital platforms.<sup>1</sup> While digitalization offers numerous advantages, such as increased efficiency, accessibility, and sustainability, it also poses challenges in preserving due process and managing evidence in the digital realm.<sup>2</sup>

Digitalization has transformed not only sports themselves but also sports law, inevitably influencing sports dispute resolution.<sup>3</sup> Therefore, it is crucial to study digital evidence in sports disputes today. This paper aims to explore the challenges digital evidence poses in sports, with a specific focus on football. The paper scrutinizes the spectrum of digital evidence utilized by litigants by applying comparative legal analysis and case studies, including examining existing literature, legal frameworks, and case law. It sheds light on the admissibility standards adopted by arbitral tribunals.

## 1 The concept of digital evidence

In legal contexts, the terms “electronic evidence”, “digital evidence”, or “computer evidence” are often used interchangeably, though their exact usage may vary across literature.<sup>4</sup> Digital evidence refers to any material in digital form adduced to establish a fact. Therefore, it encompasses data created, manipulated, stored, or transmitted by any computer or electronic device.

Domestic statutes usually define the types of evidence in general terms, that is, the most used types of evidence in court and arbitration tribunals: real evidence, demonstrative evidence; documentary evidence; and testimonial evidence. In general terms, evidence can be testimony, documents, photographs, videos, voice recordings and other legal admissible means.

Most domestic statutes provide comprehensive definitions for the types of evidence commonly used in courts and arbitration tribunals. These definitions typically encompass a wide range of evidence, including real evidence, demonstrative

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<sup>1</sup> FERREIRA, D. B., GROMOVA, E., & TITOVA, E. V. (2024). The Principle of a Trial Within a Reasonable Time and Just Tech: Benefits and Risks. *Human Rights Review*, 1-20. <https://doi.org/10.1007/s12142-024-00715-w>.

<sup>2</sup> PATRIKIOS, A. (2008). The role of transnational online arbitration in regulating cross border e-business – Part I. *Computer Law & Security Review*, 24(1), 66–76. <https://doi.org/10.1016/j.clsr.2007.11.005>; Li, Z., Zheng, P., & Xie, H. (2024). Judicial digital intellectualization and corporate online misconduct. *Finance Research Letters*, 62, 105117. <https://doi.org/10.1016/j.frl.2024.105117>.

<sup>3</sup> JONSON, P., & HOYE, R. (2011). Sport law and regulation. *Sport Management Review*, 14(3), 223–225. <https://doi.org/10.1016/j.smr.2011.08.003>; Reedy, P. (2023). Interpol review of digital evidence for 2019–2022. *Forensic Science International Synergy*, 6, 100313. <https://doi.org/10.1016/j.fsisyn.2022.100313>; ZHANG, J. K., ALIMADADI, A., REVEAL, M., DEL VALLE, A. J., PATEL, M., O'MALLEY, D. S., MERCIER, P., & MATTEI, T. A. (2023). Litigation involving sports-related spinal injuries: a comprehensive review of reported legal claims in the United States in the past 70 years. *The Spine Journal*, 23(1), 72–84. <https://doi.org/10.1016/j.spinee.2022.08.012>.

<sup>4</sup> MASON, S., & SENG, D. (2021). *Electronic Evidence and Electronic Signatures* (p. 604). University of London Press. <https://ials.sas.ac.uk/publications/electronic-evidence-and-electronic-signatures>.

evidence, documentary evidence, and testimonial evidence. Evidence can take various forms, such as testimony, documents, photographs, videos, voice recordings, and other legally admissible means.

In both common law and civil law jurisdictions, the legal frameworks generally admit all forms of evidence, including those in digital format, with the ultimate consideration being the authenticity of the digital proof.

The UNCITRAL Model Law on International Commercial Arbitration (1985), with the 2006 amendments, serves as a critical international model law for arbitration. Article 7 (3)(4) of Option I of this Model Law, for instance, acknowledges the validity of an arbitration agreement concluded by electronic communication. However, procedural rules in arbitration allow the parties to select the procedure they wish to follow, as Article 19 of the UNCITRAL Model Law outlines. Hence, guidelines for assessing evidence and arbitration rules are deemed essential for any thorough analysis in this context.

In contemporary legal practice, there is a noticeable decline in paper-based proceedings, with videoconference hearings<sup>5</sup> increasingly replacing or complementing in-person hearings. This shift reflects the broader trend toward digitalization in dispute resolution, characterized by efficiency, accessibility, and sustainability. This era is often called the “digital multi-door courthouse”, highlighting the emergence of digital dispute resolution (DDR).<sup>6</sup>

The realm of dispute resolution is no exception to this trend. Institutions, such as the CBF's NDRC, the Brazilian Center for Mediation and Arbitration (CBMA), and the Court of Arbitration for Sport (CAS), have adopted virtual proceedings. For instance, the CBMA, which previously relied on paper-based processes, transitioned to a fully digital system post-pandemic.

As sports dispute resolution institutions manage their proceedings digitally, all evidence eventually takes on an electronic form. Consequently, the admissibility and weight of digital evidence and the sports dispute institution's rules become critical considerations in these contexts.

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<sup>5</sup> FERREIRA, D. B., GIOVANNINI, C., GROMOVA, E., & DA ROCHA SCHMIDT, G. (2022). Arbitration chambers and trust in technology provider: Impacts of trust in technology intermediated dispute resolution proceedings. *Technology in Society*, 68, 101872. <https://doi.org/10.1016/j.techsoc.2022.101872>. See also FERREIRA, D. B., GIOVANNINI, C., GROMOVA, E. A., & FERREIRA, J. B. (2023). Arbitration chambers and technology: witness tampering and perceived effectiveness in videoconferenced dispute resolution proceedings. *International Journal of Law and Information Technology*, 31(1), 75-90. <https://doi.org/10.1093/ijlit/eaad012>

<sup>6</sup> PALANISSAMY, A., & KESAVAMOORTHY, R. (2019). Automated Dispute Resolution System (ADRS) – a proposed initial framework for digital justice in online consumer transactions in India. *Procedia Computer Science*, 165, 224–231. <https://doi.org/10.1016/j.procs.2020.01.087>.

## 2 Digital evidence in sports disputes: the issue of admissibility

In legal proceedings, it is crucial to distinguish between the admissibility and relevance of evidence. Admissibility pertains to whether evidence is legally permissible for consideration by the judge or arbitrator. At the same time, relevance concerns the degree to which evidence logically proves or disproves a fact, a determination made by the adjudicator based on their experience and common sense.

Arbitral tribunals, as granted by article 19 (2) of the UNCITRAL Model Law on International Commercial Arbitration, hold the power to determine the admissibility, relevance, materiality, and weight of any evidence. However, this provision does not explicitly address evidence in electronic form, which leaves room for interpretation.

Similarly, the 1996 Brazilian Arbitration Act (Article 22) and the 1987 Swiss Private International Law Act (PILA) (Article 184[1]) empower arbitral tribunals to admit and assess evidence as they deem necessary, including the authority to conduct the taking of evidence themselves. The PILA further allows tribunals (Article 182 [2]) to determine procedural matters without party agreement.

The tribunal's broad discretion to analyze evidence admissibility and relevance is also reflected in the institution's arbitration rules.

In the context of Brazilian football dispute resolution, the ecosystem is comprised of the following entities: The Brazilian Football Confederation (CBF) National Dispute Resolution Chamber (NDRC),<sup>7</sup> and the Brazilian Center for Mediation and Arbitration (CBMA) serve as the primary dispute resolution bodies, with the CBMA acting as the appellate tribunal. The Anti-Doping Sports Courts of Justice handle the football doping cases,<sup>8</sup> with the Court of Arbitration for Sport (CAS) serving as the institution for appeals.

The rules governing the assessment of evidence play a paramount role in shaping the decision-making process in Brazilian football dispute resolution institutions such as the CBF-NDRC, CBMA, and CAS.

Article 16, §1º of the CBF-NDRC rules mandates that the NRCD (National Dispute Resolution Chamber) must freely assess the evidence, making decisions based on its conviction and providing reasons for its conclusions in the final decision. Conversely, the CBMA's ordinary and appellate sports arbitration rules are silent on the method of evidence assessment, although, in practice, the tribunal enjoys broad discretion.<sup>9</sup>

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<sup>7</sup> CBF – Câmara Nacional de Resolução de Disputas – CNRD. <https://www.cbf.com.br/a-cbf/cnrd/index>. Accessed 22 April 2024.

<sup>8</sup> Tribunal de Justiça Desportiva Antidopagem. <https://www.gov.br/esporte/pt-br/composicao/orgao-colegiado-1/tribunal-de-justica-desportiva-antidopagem#:~:text=0%20Tribunal%20de%20Justi%C3%A7a%20Desportiva,%20Arbitration%20for%20Sport%20%2D%20CAS>. Accessed 22 April 2024.

<sup>9</sup> See the rules at <https://cbma.com.br/arbitragem/regulamento-de-arbitragem-esportiva/>. Accessed 22 April 2024.

CAS Article R57 similarly empowers the tribunal to assess evidence, explicitly stating that the tribunal has the discretion to exclude evidence if it was already available before the rendering of the appealed decision.<sup>10</sup> This provision aims to prevent surprises in the appeal process and to discourage arbitration guerrilla tactics. Article R57 also underscores the panel's full authority to review the facts and the law.<sup>11</sup>

In the jurisprudence of the Court of Arbitration for Sport (CAS), a nuanced approach is taken regarding excluding evidence, particularly in cases where evidence was not produced in the initial proceedings: *Article R57(3) of the CAS Code gives a CAS panel discretion, but not the obligation, to exclude evidence that was not produced in first instance. Consequently, the panel is not limited to considerations of the evidence that was adduced previously and can examine all new evidence produced before it. It should exclude evidence with restraint, only when there is a clear showing of abusive or inappropriate behavior. In this context, a sports association does not behave abusively when it mandates new reports from integrity betting companies with a view to clarifying some diverging interpretations put forward by the appellant. For the same reasons, the jurisprudence on the prohibition of post-facto evidence is not relevant, it being specified that it would in any case not result in a finding of inadmissibility, but in a diminution of the probative value of the said reports.*<sup>12</sup>

Notably, neither institutional arbitration rules nor guidelines nor domestic arbitration laws in Brazil specifically address the authentication requirements for evidence, including digital evidence.

In international arbitration, two prominent guidelines govern the taking of evidence: the International Bar Association (IBA) Rules on the Taking of Evidence in International Arbitration,<sup>13</sup> and the Efficient Conduct of Proceedings in International Arbitration (Prague Rules) from 2018.<sup>14</sup> When endorsed by the parties and adopted by the arbitral tribunal, these guidelines establish parameters for conducting proceedings and assessing evidence. The IBA Rules, in particular, serve as a bridge between different legal cultures,<sup>15</sup> reflecting procedures from various legal systems with a predominant influence from the common law tradition. Despite being considered soft law, these guidelines are valuable for resolving domestic and cross-border sports disputes.

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<sup>10</sup> See CAS 2012/A/2797, and CAS 2020/A/7117.

<sup>11</sup> CAS – Code: Procedural Rules. <https://www.tas-cas.org/en/arbitration/code-procedural-rules.html>. Accessed 22 April 2024.

<sup>12</sup> CAS 2022/A/8651.

<sup>13</sup> IBA Rules. <https://www.ibanet.org/MediaHandler?id=def0807b-9fec-43ef-b624-f2cb2af7cf7b>. Accessed 22 April 2024.

<sup>14</sup> Prague Rules. [https://praguerules.com/prague\\_rules/](https://praguerules.com/prague_rules/). Accessed 22 April 2024.

<sup>15</sup> IBA Rules Foreword, p. 5.

When considering the admissibility of digital evidence, Article 9 of the IBA Rules on the Taking of Evidence in International Arbitration is a crucial reference point. This article grants the arbitral tribunal the authority to reject evidence for various reasons, such as lack of relevance, legal impediments, or considerations of procedural efficiency. Significantly, Article 9(3) allows the tribunal to exclude evidence obtained illegally, such as hacked evidence or evidence violating privacy, upon request or at its discretion. However, the *Commentary on the revised text of the 2020 IBA Rules* notes that national laws vary on the admissibility of illegally obtained evidence, leading to diverse decisions by arbitral tribunals.

On the other hand, the Prague Rules, while not explicitly defining documents, champion efficiency in document production. Article 4.2 encourages the arbitral tribunal and parties to steer clear of extensive document production, including e-discovery, in order to streamline proceedings. Moreover, as per Article 4.7, documents must be submitted or produced in photocopies and/or electronically, with the tribunal having the authority to request originals for examination.

To assist parties in efficiently producing electronic evidence, the International Chamber of Commerce (ICC) has issued helpful reports. The 2016 ICC Commission Report on Managing E-Document Production,<sup>16</sup> and the 2018 ICC Commission Report on Controlling Time and Costs in Arbitration guide cost-effective strategies.<sup>17</sup> The 2016 report suggests considering five factors for the scope of production: timing, number, and focus of requests; specificity of requests; accessibility of sources; metadata; and use of electronic tools and methods. These resources serve as valuable tools for parties navigating the complexities of electronic evidence in arbitration.<sup>18</sup>

In arbitration, each institution establishes specific procedural rules that provide guidelines for handling evidence by detailing evidentiary procedures or leaving a gap for arbitrators to determine the best approach in conjunction with the parties. This discretion grants arbitrators significant latitude in assessing evidence. Regardless of its form, arbitrators are tasked with evaluating evidence for admissibility, weighing its probative value, and ultimately determining its impact on the case.

In football disputes, the practices observed in Brazilian arbitration institutions, namely the NDRC and CBMA, illustrate a broad approach to evidence admission,

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<sup>16</sup> The document is copyright 2012, but the date of publication is July 2016, available at <https://iccwbo.org/wp-content/uploads/sites/3/2022/01/icc-arbitration-adr-commission-report-on-managing-e-document-production-english-version.pdf>. Accessed 22 April 2024.

<sup>17</sup> <https://iccwbo.org/news-publications/arbitration-adr-rules-and-tools/icc-arbitration-commission-report-on-techniques-for-controlling-time-and-costs-in-arbitration/>. Accessed 22 April 2024.

<sup>18</sup> FERREIRA, D. B., & GROMOVA, E. A. (2023). ELECTRONIC EVIDENCE IN ARBITRATION PROCEEDINGS: EMPIRICAL ANALYSIS AND RECOMMENDATIONS. *Digital Evidence & Elec. Signature L. Rev.*, 20, 30. <https://doi.org/10.14296/deeslr.v20i.5608>.

encompassing both analogic and digital forms. Subsequently, arbitrators deliberate on the weight of this evidence when rendering decisions. A critical divergence between commercial arbitration and sports disputes lies in the parties involved, with sports disputes often featuring individuals rather than corporate entities. This distinction leads to a more informal mode of communication, significantly impacting the types of evidence presented. Notably, social media messages, particularly those from platforms like WhatsApp, have emerged as pivotal evidence in Brazilian sports disputes, as evidenced by an analysis of evidence adduced in CBMA sports cases.<sup>19</sup>

In digital evidence, arbitrators must consider three fundamental factors: authenticity, provenance (authorship), and preservation (chain of custody). They must ensure that the evidence is authentic, potentially aided by a certificate of authenticity, verifying its authorship, and meticulously documenting its life cycle to minimize the risk of fraud and enhance reliability. When faced with uncertainty, arbitrators must seek the expertise of specialists to validate the digital evidence in question.

In CAS jurisprudence, a party challenging the authenticity of evidence must substantiate their claim of forgery with an expert opinion: *It is for the party alleging that the signature is a forgery to request an expert opinion to verify authenticity or initiate proceedings before competent penal authorities. In the absence of evidence, the authenticity of the signature must be presumed.*<sup>20</sup>

### 3 Digital evidence in sports disputes: the issue of hacked and leaked evidence

In the realm of arbitration, the admissibility of digital evidence obtained through unauthorized means, such as hacking, presents a multifaceted challenge. This is primarily due to the lack of a uniform approach across jurisdictions, which further complicates the matter. The term 'hacker' denotes an individual who intentionally gains unauthorized access to computer systems.<sup>21</sup> Consequently, in state courts or arbitration proceedings, hacked evidence refers to digital documents, data, or images acquired through unauthorized access to computer systems. Conversely, leaked information involves private data obtained through illegal or prohibited

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<sup>19</sup> FERREIRA, D. B., & GROMOVA, E. A. (2023). Electronic evidence in arbitration proceedings: empirical analysis and recommendations. *Digital Evidence & Elec. Signature L. Rev.*, 20, 30, p. 38.

<sup>20</sup> CAS 2021/A/8292.

<sup>21</sup> FURNELL, S. M., & WARREN, M. J. (1999). Computer hacking and cyber terrorism: The real threats in the new millennium? *Computers & Security*, 18(1), 28-34. [https://doi.org/10.1016/S0167-4048\(99\)80006-6](https://doi.org/10.1016/S0167-4048(99)80006-6).

means and subsequently disclosed to the public.<sup>22</sup> The distinction is that hacked information is acquired by an external party with unauthorized access. In contrast, leaked information is obtained by an internal party with authorized access but shared without authorization.

International arbitration jurisprudence places significant emphasis on the inadmissibility or exclusion of digitally obtained evidence procured by parties involved in cyberattacks, i.e., hacked evidence. This is based on the grounds of violating the *clean hands doctrine*,<sup>23</sup> a legal principle that dictates a party with unclean hands, having breached the duty of good faith, cannot benefit from evidence obtained illegally.

On the other hand, arbitration tribunals have more widely admitted leaked evidence, provided that it meets standards of reliability, authenticity, and accuracy. However, arbitrators should seek the original documents rather than rely solely on leaked documents in the public domain.<sup>24</sup>

A notable example is the 2020 case of Manchester City FC v. UEFA before the Court of Arbitration for Sport (CAS), in which leaked emails were admitted as evidence after undergoing reliability tests. The CAS decision emphasized the importance of authenticating leaked evidence for admissibility, highlighting the tribunal's cautious approach towards evidence obtained through unauthorized means: *The Panel notes that the matter of the authenticity of the Leaked Emails was resolved because MCFC ultimately – at least partially – submitted the unredacted original versions of the Leaked Emails into evidence. [...] To avoid any doubt in respect of the authenticity of the Leaked Emails, the Panel does not rely on the Leaked Emails, but on the original versions thereof provided by MCFC on 18 May 2020. For ease of reference, the Panel however continues to refer to the Leaked Emails. The award also cites CAS jurisprudence stating that if a means of evidence is illegally obtained, it is only admissible, if the interest to find the truth prevails. The tribunal also considered the fact that the leaked emails were already in the public domain and are highly publicized, i.e. that they are not alleged to have been illegally obtained by UEFA.*<sup>25</sup>

In arbitration, particularly within the jurisdiction of the Court of Arbitration for Sport (CAS), the treatment of illegally obtained evidence presents a complex and

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<sup>22</sup> FREEMAN, L. (2020). Hacked and Leaked: Legal Issues Arising from the Use of Unlawfully Obtained Digital Evidence in International Criminal Cases. *UCLA J. Int'l L. Foreign Aff.*, 25, 45. <https://escholarship.org/content/qt5b87861x/qt5b87861x.pdf>. Accessed 22 April 2024.

<sup>23</sup> WORSTER, W. T. The Effect of Leaked Information on the Rules of International Law (2013). *American University International Law Review*, 28, 443-464.

<sup>24</sup> FERREIRA, D. B., & GROMOVA, E. A. (2023). Digital Evidence: The Admissibility of Leaked and Hacked Evidence in Arbitration Proceedings. *International Journal for the Semiotics of Law-Revue internationale de Sémiotique juridique*, 37, 903-922. <https://doi.org/10.1007/s11196-023-10014-1>.

<sup>25</sup> CAS 2020/A/6785

nuanced challenge. In a notable case, the Swiss Federal Tribunal acknowledged the general principle in Swiss doctrine that illegally obtained evidence is unusable but also recognized exceptions to this principle. After a meticulous examination, the Tribunal upheld a CAS decision in which the arbitral Tribunal admitted specific evidence: *The arbitral tribunal carried out an individual examination of the various interests affected and did not admit all evidence, but rather, based on a balance of interests, considered the transcript of an illegally tape-recorded telephone conversation with a player involved to be unusable and only took another video recording into account because the complainant and other appellants referred to this to exonerate themselves.*<sup>26</sup>

The nuanced approach of CAS jurisprudence is further exemplified through notable cases in which unlawfully obtained evidence was deemed admissible. Notably, in a doping case (CAS 2011/A/2384), CAS permitted the testimony of an anonymous witness. In contrast, in a match-fixing case (CAS 2013/A/3258), complete transcripts of intercepted text messages and recorded phone calls acquired by Turkish authorities were considered.

Leaked documents in football disputes represent a critical area of concern for stakeholders. Given the fervor associated with football, including prominent clubs and players, important documents such as contracts and communications are susceptible to hacking and subsequent leaks. To mitigate these risks, stakeholders must, therefore, prioritize investment in cybersecurity tools and compliance regulations.

CAS has established criteria for admitting leaked evidence, emphasizing the reliance on original versions, the overriding interest in establishing the truth, and should also adhere to the clean hands' doctrine. In the context of leaked evidence already in the public domain, this doctrine underscores CAS's approach to balancing the interests at stake.

These cases underscore a growing ambiguity surrounding the concept of illegally obtained evidence. While principles such as *ex turpi causa non oritur action* (*no action can arise from an illegal act*) are foundational in common law, they may not apply straightforwardly to leaked evidence presented by a third party with clean hands. CAS jurisprudence highlights the Tribunal's authority to assess evidence, weigh conflicting interests, and determine admissibility considering these complexities.

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<sup>26</sup> ATF 4A\_362/2013. [https://www.bger.ch/ext/eurospider/live/fr/php/aza/http/index.php?highlight\\_docid=aza%3A%2F27-03-2014-4A\\_362-2013&lang=fr&type=show\\_document&zoom=NO&.](https://www.bger.ch/ext/eurospider/live/fr/php/aza/http/index.php?highlight_docid=aza%3A%2F27-03-2014-4A_362-2013&lang=fr&type=show_document&zoom=NO&.) Accessed 23 April 2024.

## 4 Guidelines for the use and assessment of digital evidence in efficient sports arbitration

The proliferation of digital evidence in arbitration underscores the imperative for parties and arbitrators to acquire expertise in digital forensics.<sup>27</sup> Parties, in particular, must devise strategies to produce digital evidence, especially in e-discovery, cost-effectively. Leading arbitration institutions' guidelines, such as those from the ICC, serve as invaluable resources. Additionally, parties should prioritize enhancing the reliability of the evidence they present, with authentication being key to compliance with jurisdictional regulations.

Moreover, parties should be adept at identifying reliability red flags in digital evidence proffered by their counterparts, enabling them to challenge its inclusion in arbitration proceedings. Arbitrators, on the other hand, are tasked with assuming an active role in overseeing the production of evidence, including evaluating the authenticity and reliability of digital evidence, a responsibility underscored by jurisdiction-neutral guidelines crafted to assist in this assessment.

Arbitrators must strike a delicate balance between upholding due process and avoiding undue paranoia (*due process paranoia*) regarding evidence. A well-reasoned arbitration award detailing the rationale behind any decision to exclude evidence significantly enhances its enforceability. Therefore, arbitrators are duty-bound to exclude fraudulent digital evidence, or any evidence deemed inadmissible, thus ensuring the integrity of the arbitration process.

## Conclusion

Sport, especially football, embodies intense passion, substantial financial stakes and a multitude of powerful stakeholders, including managers, players, athletes and clubs. With the integration of the digital sphere and the digitization of arbitration procedures, electronic evidence has become commonplace. This includes but is not limited to emails, text messages, social media posts and videos. The skills required to effectively obtain and evaluate this form of evidence are not only useful, but crucial. Legal practitioners and arbitrators should receive comprehensive training and seek professional help to build their arguments and make judgments based on such evidence.

The field of sport is particularly susceptible to evidence leakage, prompting arbitrators to reflect on its implications, especially when the pursuit of truth is paramount. In addition, arbitrators must weigh its admissibility if the evidence

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<sup>27</sup> KESSLER, Gary C. (2011). Judges' Awareness, Understanding, and Application of Digital Evidence, *Journal of Digital Forensics, Security and Law*. 6, 1, 55-72. <https://doi.org/10.15394/jdfs.2011.1088>.

has been made public. Judges should consider the clean hands doctrine if a party contributed to the evidence of tampering.

In general, the legal and arbitration framework gives arbitrators broad discretion in evaluating evidence. This discretion underscores the importance of arbitrators being well-versed in the nuances of the digital landscape, allowing them to exercise their discretion wisely.

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**A evolução da arbitragem esportiva: A passagem das provas em papel para as provas digitais nas disputas no futebol**

**Resumo:** A digitalização apresenta muitos desafios para o direito esportivo, incluindo questões relacionadas ao uso de provas digitais nas disputas arbitrais. Como um dos esportes mais populares, o futebol gera muitas controvérsias esportivas. As partes cada vez mais utilizam provas digitais para sustentar suas posições, o que exige uma avaliação minuciosa e profissional por parte dos árbitros. O objetivo deste artigo é explorar os desafios que as provas digitais representam no esporte, com foco específico no futebol. A pesquisa concentra-se principalmente na admissibilidade das provas digitais e nas provas hackeadas e vazadas, dado o risco de violações de dados sensíveis do futebol. A aplicação da análise jurídica comparativa e do estudo de caso, através da análise da literatura existente, dos frameworks legais e da jurisprudência, permitiu examinar uma gama de provas digitais utilizadas pelos litigantes e demonstrar os padrões de admissibilidade adotados pelos tribunais arbitrais. Como uma implicação prescritiva, os autores propuseram orientações práticas para partes interessadas e adjudicadores sobre como gerenciar e avaliar provas digitais na arbitragem esportiva.

**Palavras-chave:** Arbitragem esportiva. Provas digitais. Jurisprudência. Provas hackeadas e vazadas. Notas Práticas.

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