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Legal admissibility of microforms

Valeur juridique des microformes

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Foreword

ISO (the International Organization for Standardization) is a worldwide federation of national standards bodies (ISO member bodies). The work of preparing International Standards is normally carried out through ISO technical committees. Each member body interested in a subject for which a technical committee has been established has the right to be represented on that committee. International organizations, governmental and non-governmental, in liaison with ISO, also take part in the work. ISO collaborates closely with the International Electrotechnical Commission (IEC) on all matters of electrotechnical standardization.

The main task of ISO technical committees is to prepare International Standards. In exceptional circumstances a technical committee may propose the publication of a Technical Report of one of the following types:

- type 1, when the required support cannot be obtained for the publication of an International Standard, despite repeated efforts;
- type 2, when the subject is still under technical development or where for any other reason there is the future but not immediate possibility of an agreement on an International Standard;
- type 3, when a technical committee has collected data of a different kind from that which is normally published as an International Standard ("state of the art", for example).

Technical Reports of types 1 and 2 are subject to review within three years of publication, to decide whether they can be transformed into International Standards. Technical Reports of type 3 do not necessarily have to be reviewed until the data they provide are considered to be no longer valid or useful.

ISO/TR 10200, which is a Technical Report of type 3, was prepared by Technical Committee ISO/TC 171, *Micrographics and optical memories for document and image recording, storage and use*.

Annex A of this Technical Report is for information only.

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Historical preface

The problem of the legal validity of microfilm was first considered at the international level in May 1973 by the International Council on Archives (ICA), and that year Unesco commissioned the ICA to conduct a preliminary comparative survey and analysis of the statutory regulations in force in various countries concerning the legal validity and use of certified microcopies in place of the original documents. The survey, entitled 'Legal Questions of the Application of Microforms' (COM-75/WS/30), was published by Unesco in 1975.

The study described the statutory regulations in 26 countries. Because 'the statutory rules as well as practices of various countries were not general, not all-embracing and not even uniform in all respects', it recommended that countries considering the introduction of legal regulations should make a survey of existing statutory rules.

With the purpose of providing a starting point for countries not having such legislation, the authors made extensive definitive recommendations which included (among others) basic rules for preparing microfilm, identification of the data on the microfilm, authentication, retention and storage, and appointment of an organization or person responsible for the preparation of the microfilm. It was hoped that the recommendations would lead to a convention to establish international regulations for the legal recognition and validity of microfilms.

In 1977 ISO Technical Committee 46/SC 1 'Micrographics' formed an ad hoc group on the legal admissibility of microforms, which recommended that liaisons be established with Unesco, the Council of Europe, the ICA and other interested organizations.

The Council of Europe commissioned a report, issued in 1979, on the standardization of legislation relating to the need for documentary evidence and to the validity of reproductions of documents and computer-stored information as evidence. The International Micrographic Congress (IMC) was also interested in the legal admissibility of microforms and in 1979 contributed revisions to the Unesco study.

In that year Unesco proposed to ICA that the study be updated in the light of new and revised legislation in a number of countries. A new report was prepared for the Unesco General Information Programme and UNISIST. The report, 'The Admissibility of Microforms as Evidence: a RAMP Study' (PGI-81/WS-25), was completed in March 1981. It provided much additional information and included many analytical and constructive comments.

At the first meeting of ISO/TC 171 (formerly ISO/TC 46/SC 1) in 1979, the ad hoc group examined the legal status of microforms in each member country, and at its next meeting in 1980 (now transformed to Working Group 7 'Legal admissibility of microforms') concluded that, because of different conditions and legal requirements in many countries, it would be difficult to prepare a generally acceptable international standard. Instead, it decided to prepare a technical report that would provide a survey of national standards that apply to legal admissibility of microforms.

The survey was conducted during 1984 and resulted in the decision in 1985 to modify the technical report. It would comprise a guide to the production of microforms to assist in ensuring legal acceptability, and an annex that would set out the legal situation in those countries that provided the necessary information.

A draft prepared on that basis was circulated in December 1986. This document represents the culmination of that work.

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Introduction

The business community and governments use microfilm as an information medium because it costs less to store than equivalent paper records, can be used more efficiently in information-retrieval systems, provides accurate reproduction of originals and an inexpensive means of making duplicates of records used in computerized record-keeping systems. Even so, many offices do not make the best use of microfilm because staff are uncertain whether microfilm will be admissible as evidence in court proceedings.

In considering microfilm and the law, the question is not whether it is legal to microfilm documents, as no law prohibits anyone from microfilming his own documents, but rather whether a copy on microfilm will be admissible in court proceedings as an adequate substitute for a paper original that may have been destroyed, lost or given away. From a legal point of view, it is far more important for an organization to authorize formally the storing of permanent records on microfilm and the destruction of paper originals once they have been microfilmed, than it is to authorize the microfilming of paper files. If there is no such authorization, a court might find that although the microfilming of documents was authorized, the destruction of the originals was not, thereby reducing the credibility of the microfilm as evidence and, possibly, allowing the inference that the original was destroyed in bad faith.

It is necessary not only for legal specialists, but also for information-handling specialists and others concerned with establishing office procedures, to understand the requirements of evidence so that guarantees of security and accuracy can be built into record-keeping systems when they are designed. Those responsible for the system should also ensure that microfilm copies comply with the appropriate national or international standards.

This technical report has been drawn up to help organizations to ensure that a properly planned and authorized programme for microfilming documents and destroying originals is introduced, so that the production of microfilm can be shown to be part of normal business practice. Readers should nevertheless note that there is little legal precedent on the question of admissibility of microfilms, and no guarantee can be given that microfilms prepared in accordance with this technical report will automatically be admissible.

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Legal admissibility of microforms

1 Scope

This technical report makes recommendations for procedures to be followed in any microfilming programme that is designed to ensure the preservation and integrity of the information recorded on original records. If the procedures are followed, the microfilm copies should be regarded as adequate substitutes for the original records and should serve the purposes for which such records were created and maintained. The report gives advice both about the importance of routine certification of microfilm copies and the physical characteristics that will ensure that the microfilm image is of adequate quality.

The report applies to all kinds of microform, including microfilm in roll form, microfiche, microfilm jackets, aperture cards and computer-generated microforms. If an organization uses a microfilming system that allows images to be updated, erased or replaced, special safeguards may be needed to satisfy the court that this has been done as part of routine office procedure. Computer-generated microforms will have the same standing as other forms of computer-generated information, provided the microfilm image is of adequate quality.

2 Normative references

The following standards contain provisions which, through reference in this text, constitute provisions of this technical report. At the time of publication, the editions indicated were valid. All standards are subject to revision, and parties to agreements based on this technical report are encouraged to investigate the possibility of applying the most recent editions of the standards indicated below. Members of IEC and ISO maintain registers of currently valid International Standards.

ISO 4331 : 1986, Photography - Processed photographic black-and-white film for archival records - Silver-gelatin type on cellulose ester base - Specifications.

ISO 4332 : 1986, Photography - Processed photographic black-and-white film for archival records - Silver-gelatin type on poly(ethyleneterephthalate) base - Specifications.

ISO 5466 : 1986, Photography - Processed safety photographic film - Storage practices.

ISO 6196-1 : 1980, Micrographics - Vocabulary - Part 1: General terms.

ISO 6196-2 : 1982, Micrographics - Vocabulary - Part 2: Image positions and methods of recording.

ISO 6196-3 : 1983, Micrographics - Vocabulary - Part 3: Film processing.

ISO 6196-4 : 1987, Micrographics - Vocabulary - Part 4: Materials and packaging.

ISO 6196-5 : 1987, Micrographics - Vocabulary - Part 5: Quality of images, legibility, inspection.

ISO 6196-6 : —¹⁾, Micrographics - Vocabulary - Part 6: Equipment.

ISO 6196-7 : —¹⁾, Micrographics - Vocabulary - Part 7: Computer micrographics.

ISO 8126 : 1986, Micrographics - Diazo and vesicular films - Visual density - Specifications.

3 Definitions

For definitions of the technical terms used in this report, see ISO 6196.

4 Establishing procedures

4.1 Principles

If microfilm is produced in evidence instead of an original paper document, the organization responsible should be able to show that the microfilm can be relied upon as being an authentic copy of the original. An organization that plans to destroy original records after they have been microfilmed should therefore establish procedures that include safeguards against falsification and error. If the organization can show that its routine office procedure is to microfilm documents and then destroy the originals as part of an established programme, microfilm copies should be acceptable as evidence. Documents of historical value should not be destroyed (see 5.8).

4.2 Programme

The organization should issue a written programme for microfilming. The programme, certificates and related documents should be stored in a safe place. The programme should include information about:

- a) the types of original to be microfilmed;
- b) procedures for microfilming;
- c) procedures for quality-control inspection of the processed microfilm;
- d) information about storage and retrieval;
- e) procedures for certification and registration;
- f) procedures for destroying originals and recording their destruction.

¹⁾ To be published.

4.3 Certificates

The programme should include provision for the following certificates to be completed at the appropriate stage:

- a) authorization certificate, giving written approval for each batch of records to be microfilmed;
- b) camera operator's certificate, giving details of filming, with additional certificates giving information about splices or continuation reels;
- c) acceptance certificate, completed after the microfilm has been checked;
- d) destruction certificate, issued after the microfilm copies have been checked, to allow destruction of the original records.

4.4 Bureaux

If an organization employs a microfilm bureau to carry out its microfilming programme, the organization should satisfy itself that the bureau's programme provides security for the documents and adequate certification and filming procedures. The person responsible for appointing the bureau should write an account of the bureau's programme and confirm that the bureau's procedures are satisfactory. The bureau's operations should be reviewed from time to time and the register of microfilms should be inspected regularly. In these circumstances microfilm produced in a bureau should be equally admissible with microfilm produced in-house.

5 General recommendations

5.1 Document preparation

An organization that introduces a microfilming programme should ensure that documents produced within the organization will be of a quality that will be legible on microfilm. Documents that are torn or crumpled may need to be repaired before they are microfilmed. The document's text should not be altered or retouched to improve its legibility, because that would impair the integrity of the original.

5.2 Indexing

Microforms should be arranged, identified and indexed in accordance with a system that facilitates the retrieval of a particular document. The system may be manual, semi-automatic or computer-operated.

5.3 Filming

Documents should be microfilmed in accordance with relevant ISO standards. They may be microfilmed in-house or by a bureau.

The reduction ratio used should be selected to allow full-size copies to be produced without loss of information.

Test targets and certificates should be recorded at the beginning and end of each roll. If refilming that necessitates the splicing of any frame or frames is necessary, details of the refilming should be recorded.

For aperture cards, jackets or other unitized filming, a certificate may be recorded on each frame, unless a master film is kept in roll form.

Computer-generated microforms should contain the date of production and sufficient information to link the microfilmed information to its software source.

5.4 Film

Dry-silver, diazo, vesicular, updatable and silver-gelatin-type films may be used if they are likely to satisfy legal and other requirements (see also ISO 8126). If there is an archival requirement, it is essential that silver-gelatin-type microfilm that complies with ISO 4331 or ISO 4332 is used. The legal acceptability of updatable films should be checked before they are used.

5.5 Inspection and quality control

It is essential that the organization establishes good practice for the inspection and quality control of microfilm. Only when the quality of the microform has been established as satisfactory should the original be destroyed, subject to the provisions of 5.8. The whole system, including equipment and components, should be inspected regularly.

5.6 Duplication and distribution copies

If the information in a microform is required for frequent reference or duplication, one microform should be stored for production in evidence and another used for reference and duplication. Duplicate and distribution copies are not normally produced in evidence. If they are used in evidence, the organization's programme should include procedures for ensuring that they can be shown to be true copies of the original, have the proper certificates and are of acceptable quality.

5.7 Storage

Processed microfilm should be stored in accordance with the recommendations of ISO 5466. Conditions of storage should be designed to take account of local climate and special hazards, e.g. high risk of fire. Provision should be made for the regular inspection of the processed microfilm to determine whether there is any deterioration of its quality while in storage (see ISO 5466).

5.8 Originals

Even where the substitution of microforms for original documents may be acceptable on administrative and legal grounds, original documents should not be destroyed if they have permanent historical value. The procedure for undertaking a microfilming programme should ensure that appropriate archival and other authorization is obtained before any original documents are destroyed.

5.9 Updating and access

If any updatable system of microfilming is used, provision should be made for recording any changes made to film after it has been certified. If necessary, there should be a separate certificate on each frame. Only authorized members of staff should be allowed access to master films in storage.

5.10 Management

All procedures should be subject to periodic review to confirm that they are being carried out in accordance with the programme. If changes in procedure are made as part of the review, the staff concerned should be informed in writing. The organization's plan should be reviewed periodically to take account of any changes in legislation, technology or other relevant matters. Any changes made in the programme should be recorded in writing.

6 Legal status

These recommendations, if followed, should result in the production of microfilm copies that are as acceptable as the paper original. If, for example, the authenticity of the original is in doubt, the authenticity of the microfilm copy will equally be in doubt. In addition, no guarantee can be given that any microform prepared in accordance with these recommendations will be automatically admissible. Any organization that decides to establish a microfilming procedure should seek legal advice in the country in which the programme will operate.

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Annex A

Legal status of microfilm in various countries

The following information about the legal status of microfilm in various countries was provided in response to a questionnaire circulated to all members of ISO. It is hoped that other countries will supply information about their use of microfilm and that those responsible will see that the information in the entries is kept up-to-date.

The information is not exhaustive and the interpretation placed here upon national legislation may not necessarily be that followed by the courts when deciding on the admissibility of microforms in specific cases.

Brazil

- a) The use of microfilm in evidence is permitted.
- b) The requirements for the use of microfilm in evidence is the same for civil and criminal proceedings.
- c) The original document and its microfilmed version is the same.
- d) Legislation is applied in governmental and private areas in evidence.
- e) The Ministeria da Justices holds the responsibility for examining microfilm produced in evidence.

Canada

- a) Microfilm is permitted as evidence in court proceedings in Canada with the following qualifications:
 - 1) The Banking document provision of the Canada Evidence Act and the various Provincial Evidence Acts provide legislative authority for microfilmed copies to be accepted as evidence in court proceedings provided that the original documents have been destroyed.
 - 2) The Business document provisions of the various provincial statutes, are much more stringent and include a stipulation that original records must be kept for a period of 6 years before the microfilmed copies will be accepted as evidence. Acceptability of microfilmed copies presented prior to the six-year period is discretionary.
- b) The requirements for the use of microfilm in evidence is the same for civil and criminal proceedings.
- c) Given the qualifications as noted in question one, microfilmed copies are given the same status as would ordinarily have been given to the original record.

d) The following legislation applies:

Canada Evidence Act
Various Provincial Evidence Acts
Revenue Canada, Taxation Circular 78-10R

e) There is no organization in Canada that has been given the responsibility to examine microfilm produced for evidence.

f) Canadian National Standard, CAN/CGSB-72.11-M88 'Microfilm as Documentary Evidence' states the important factors which are necessary for the establishment of a credible microfilm programme.

Colombia

Microfilm is admissible in evidence in certain circumstances: for further information apply to:

Departamento de Administración Documental y Micrografía
Universidad de Antioquia
Apartado Aéreo: 1226
Medellin
Colombia

Czechoslovakia

a) The use of microforms is permitted in principle, although legal admissibility varies. COM: all microforms have the legal power of an original. Conventional microforms: all microfilms are acknowledged under certain formal conditions; the authorities may allow the use of microfilms instead of individual business documents.

b) The requirements for the use of conventional microforms are different for civil and criminal proceedings:

1) Civil proceedings in litigation of state (or corporative) institutions; commercial matters are usually negotiated and the content rather than the form of documents is considered. In litigation between a juridical body and a natural person, the validity or genuine nature of the document must be investigated regularly.

2) In criminal proceedings; the proofs' presentation is based on the principle of a free evaluation of proofs, i.e. the judge himself decides whether he will acknowledge the microfilm or not.

c) Copy has the status of the original. Where the substitution of originals is acknowledged by the authorities the microform in question can be used by its owner as original. Archival documents with historical value may be microfilmed only for research purposes.

d) 'Supplements to archive and file registers and procedures - October 1977' refer.

e) The State Archive Administration has the responsibility for examining microforms produced in evidence.

f) Roll microfilms should conform to the national standard CSN 01 3818.

Denmark

No specific rules of evidence exist regarding the status of evidence on microfilm in comparison with the original.

France

In France the law of evidence is governed by articles 1316 to 1360 of the Civil Code. Legislation is still based on the original paper document and manuscript signature.

Article 1316 cites five kinds of evidence, of which the original document is full and complete evidence.

Article 1341 prescribes the original document as obligatory for all sums greater than an amount defined by decree (at present 5000 F) but instruction L.82 of the book of fiscal procedure makes it obligatory for payers of VAT to keep original documentary evidence for at least six years.

Article 1326, as revised in the law of 12 July 1980, stipulates that the original document should carry the signature of the originator 'as well as reference, in his own hand, to the sum or quantity in letters and numerals'.

Article 1348 is the basis of changes made by the law of 1980. It has made an exception to the rules for the original document 'when one of the parties cannot procure documentary evidence for material or moral reasons, having lost the title that served as documentary evidence, fortuitously or because of circumstances beyond his control.

It also makes an exception when one party or the depository has not kept the original document and presents a copy that is a reproduction which is both faithful and durable. Any indelible reproduction of the original document that involves irreversible modification of the support is considered durable.'

Germany

Information about the acceptability of microfilm in evidence is given in the following document.

AWV. *Mikrofilm-Recht: Sammlung von Rechtsvorschriften und sonstigen Regelungen zur Mikroverfilmung*. AWV-Schrift Nr 374.
Eschborn-Süd: AWV, 1987.

Available from: AWV - Arbeitsgemeinschaft für wirtschaftliche
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Italy

- a) The use of microfilm in evidence is permitted in certain circumstances.
- b) In criminal proceedings microfilm can be used as evidence only if it is proved an original and was microfilmed without being altered or modified.
- c) Microfilm can be used as evidence in civil judgements only if its conformity to the original is declared by a Public Officer or if it is not expressly defined by the defendants. However, judges can presume the conformity of microfilm with originals on the basis of sound principles.
- d) The legislation that applies to the use of microfilm in evidence is:
- Civil Code: Articles 2712, 2719
 Code of Civil Procedure: Article 215 and following
 Article 25 of Law 4/1/1968 or 15
 Decree of the President of the Government 11/9/1974
 Ministerial Decree 29/3/1979
 Article 39 Presidential Decree 633/72
 Article 22 Presidential Decree 20/9/1973 or 600
 Presidential Decree 3/6/1975 or 290.
- e) The A.I.M.I. holds the responsibility for examining microfilm used in evidence.
- f) There are no special procedures relating to the setting up and operating of microfilm programmes for recording documents that may be used in evidence.

Japan

Microfilm is admissible in evidence in certain circumstances; for further information apply to JETRO.

Malta

Apparently no specific regulations on microfilming.

Morocco

- a) Microfilm used in evidence is the same for civil and criminal proceedings.
- b) The original document is requested by the Court when microfilm is produced in evidence.
- c) There is no legislation on the use of microfilm.
- d) The Justice Department is responsible for examining any microfilm used in evidence.

Poland

- a) In principle the law does not permit microfilm as a means of evidence, unless the microfilm is produced by a responsible official and approved by the jury.
- b) Microfilm cannot be produced in evidence in civil and criminal proceedings, if the original or a copy is available.
- c) No legislation exists to allow the use of microfilm in evidence.
- d) No organization has responsibility for examining microfilm produced in evidence.

South Africa

- a) The use of microfilm in evidence is permitted provided the court is satisfied:
 - 1) the microfilm was made in the normal course of the institution placing its records on microfilm;
 - 2) the microfilm is a true copy of the original.
- b) The requirements for the use of microfilm in evidence is the same for civil and criminal proceedings.
- c) The authenticity of microfilm is accepted if the microfilmed documents are not available.
- d) The only legislation which specifically provides for the keeping of micrographic copies of records by governmental Registrars of Deeds and the Registrar of Companies are: Section 3(3) and (4) of the Deeds Registries Act, Act 47 of 1937 and Section 2(1) of the Companies Amendment Act, Act 59 of 1978.
- e) Experts from the South African Bureau of Standards or the Criminal Investigation Department of the South African Police may be called to give evidence in any dispute relating to micrographic copies.
- f) No procedures and techniques exist for the setting up of microfilm programmes for recording documents that may be used in evidence.

Sweden

- a) The use of microfilm as evidence is permitted.
- b) There are no general requirements for the use of evidence in civil and criminal proceedings, except in accounting records when the original documents are destroyed after they have been microfilmed.
- c) The law on the keeping of accounts (SFS 1976:125) gives the basic outlines for the stipulations about the destruction of accounting records after they have been microfilmed. The Code of the Swedish