

TECHNICAL REPORT

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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 Technical Reports of type 3 do not necessarily have to be reviewed until the data they provide are considered to be no longer valid or useful.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.

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.

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.