

TECHNICAL REPORT

**ISO/TR
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AMENDMENT 1
1997-05-01

Legal admissibility of microforms

AMENDMENT 1

Valeur juridique des microformes

AMENDEMENT 1



Reference number
ISO/TR 10200:1990/Amd.1:1997(E)

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 technical committees is to prepare International Standards, but 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 Technical Reports of type 3 do not necessarily have to be reviewed until the data they provide are considered to be no longer valid or useful.

Amendment 1 to ISO/TR 10200:1990, which is a Technical Report of type 1, was prepared by Technical Committee ISO/TC 171, *Document imaging applications*, Subcommittee SC 3, *General issues*.

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Annex A

France

Amend entry to read:

For further information reference should be made to Normalisation Française (AFNOR) publication Z 43-122 : 1994, *Micrographics - Legal admissibility of microforms (including COM)*.

Germany

Amend entry to read:

Legal admissibility of microfilms under German law.

a) Evidence in civil proceedings:

1) Documentary evidence:

A document, and thus the most reliable evidence in civil proceedings, is an expression of thought reduced to writing and signed by the person making it, § 416 Zivilprozeßordnung (ZPO)(Code of practice).

Thus a document is an original and not a copy generated in the form of a photocopy, photograph or microform.

Microfilm copy has not been treated as equivalent to the original under any statutory regulation, as is the case in England and Wales under the Civil Evidence Act 1968 and in the United States under Uniform Photographic Copies of Business and Public Records as Evidence Act as primary statutory law.

2) Object of judicial inspection:

Under German law, a copy of the original, as is generated by a microfilm copy, is an object of judicial inspection subject to free evaluation by the court, §§ 371, 286 ZPO. The judge is thus permitted to slip into his judgement any doubts he has about the microfilm copy being identical to the original. In order to reduce the risk of losing his case as a result thereof, the user should appoint an organization precluding falsification. Such organization should be provable in court by means of organization directions.

b) Directions for fiscal matters on the recording and conservation of commercial documents:

1) Microfilm copies have been expressly declared to be an admissible means of conservation for tax and commercial purposes under the German Fiscal Code and under an appropriate amendment of the German Commercial Code. Under such provisions, conservation is also admissible by way or reproduction on an image recording medium or on any other data medium. For the duration of the retention period, microfilm copies must be available and must be capable of being reproduced in readable form within a reasonable period of time, § 257 (3) German Commercial Code, § 147 (2) German Fiscal Code.

2) Consequently, the kind of organization advisable for civil litigation is also required for tax and commercial purposes.

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.

Available from: AWV - Arbeitsgemeinschaft für wirtschaftliche
Verwaltung e.V.
Düsseldorfer Str. 40
Postfach 51 29
D - 6236 Eschborn-Süd

Tel/fax (06196) 495-388/351

More detailed information about the acceptability of microfilm in evidence is obtainable from:

FMI-Fachverband Mikrographie und Informationverarbeitung
P.O. Box 42
D-85 379 Eching
Germany

Tel:/Fax: 089- 319 4010/089-319 1328

After Japan add new entry:

Malaysia

Microforms are admissible as evidence and reference should be made to the Evidence (Amendment) Act 1994.

South Africa

Amend entry to read:

- a) In both civil and criminal litigation, the judge has a discretion whether to allow micrographic copies of documents as evidence.
- b) The legal rule is that such evidence is allowed if the original document is no longer available; and if it is proved that the microfilm copy is a true copy of the original document. Usually this is done by proving that the original document was microfilmed in the ordinary course of business practice.
- c) In the majority of cases in the South African courts the microfilm evidence of documents is accepted.
- d) There are approximately 20 statutes (Acts of Parliament) which contain provisions for the admissibility of micrographic copies of documents as evidence in courts of law. These Acts relate mostly to documents retained by government departments or falling under their jurisdiction. In some of these Acts it is prescribed that the South African Bureau of Standards' Code of Practice for the *Processing, testing and preservation of silver gelatin microfilm for archival purposes* be followed (SABS Code of Practice 0141/1988).

United Kingdom

Amend entry to read:

- a) The use of microfilm as evidence is permitted in certain circumstances.
- b) The requirements for the use of microfilm in civil and criminal proceedings is not the same. In England and Wales the Civil Evidence Act 1995 made provision for the admissibility in civil proceedings for business records whether stored in paper form, or as microform or produced by computers. The Criminal Justice Act 1988 provides for the admissibility of microform in criminal proceedings. In Scotland the provisions of the Criminal Evidence Act 1965 still apply and civil evidence is regulated by the Civil Evidence (Scotland) Act 1988.

The Civil Evidence Act (Northern Ireland) 1971 repeats the provisions of the English statute for business records, but in relation to other documentary evidence contains important differences, particularly in the definition of 'document', which appears to exclude microforms.

- c) The legislation that applies to the use of microfilm in evidence is:

Police and Criminal Evidence Act 1984 - England and Wales
Civil Evidence Act 1995 - England and Wales
Civil Evidence (Scotland) Act 1988
Criminal Evidence Act, 1965 - Scotland
Evidence Act (Northern Ireland) 1939
Civil Evidence Act (Northern Ireland) 1971
Statute Law Revision Act (Northern Ireland) 1973

Criminal Justice (Evidence)(NI) Order 1988
Police and Criminal Evidence (NI) Order 1989
Bankers' Books Evidence Act 1879 } throughout the UK
Banking Act 1979 }

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