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[Legal Reasons for Eliminating the Certificate of Authenticity from Roll Microfilm](#)

Government and private organizations generally film a "Certificate of Authenticity" at the beginning and end of each roll of microfilm. This certificate describes the contents of the microfilm and states that the microfilm was produced in the regular course of business and accurately reproduces the original.

Government entities film the Certificate of Authenticity under legal requirements of statutes or archives. Private sector organizations film the certificate according to currently accepted microfilm practices and to facilitate the introduction of microfilm records into evidence.

Upon further examination, laws requiring this certificate should immediately be modified. Organizations currently filming this certificate should eliminate this practice. While the intent of this certificate is to enhance the admissibility of microfilm records in evidence, in reality, the certificate on the roll of microfilm could reduce the trustworthiness of the microfilm and actually preclude its admission into evidence.

What is the Certificate of Authenticity?

The Certificate of Authenticity is one of several images, known as "targets", that are filmed at the beginning and the end of a roll of microfilm. Other targets may include roll number, description of the content, resolution test chart and density test chart.

While the content of the Certificate of Authenticity may vary, most certificates contain the following information:

- An identification of the target as a certificate or certifying document
- A statement of the range of records on the roll of film such as numbers, dates, etc.
- The name of the organization or department from which the records were taken
- A statement indicating that the records were filmed in the regular course of business
- A statement indicating that the records accurately reproduce the original
- The signature of the camera operator and the date the certificate was signed

Purpose of the Certificate of Authenticity

We do not know exactly when organizations started to film the Certificate of Authenticity on their rolls of microfilm. We can guess, however, that the certificate was probably developed in response to laws of evidence that required both original records and duplicates to be "adequately identified" before admission into evidence.

In the late 1940's and early 1950's, legislative bodies began to adopt the Uniform Photographic Copies of Business and Public Records As Evidence Act. That law contained the following specific provision that may have influenced the use of the certificate on microfilm:

Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of the court.

Those reading this provision, may have concluded that the best way to adequately identify a roll of microfilm was to film the Certificate of Authenticity at the beginning and the end of the roll. In that way, the certification always stayed with the microfilmed images.

In addition, all courts require that records be identified and authenticated prior to their introduction into evidence. The Uniform Rules of Evidence (adopted originally in the 1970's) also specifies this requirement in Rule 901:

• Rule 901. Requirement of Authentication or Identification

(a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponents claim.

Many believe that the microfilm will only be admitted into evidence when the Certificate of Authenticity is filmed contiguously on the roll with the actual microfilm records. When the microfilm is introduced in evidence, the attorney refers to the certificate as a document prepared at the time of microfilm to indicate its authenticity and trustworthiness.

In the government sector, archivists and legislators adopted laws requiring that the Certificate of Authenticity appear on every roll of microfilm created by government entities. Under statutes and regulations of the archives (having the power of law), the government microfilm must contain these certificates before the government agency can legally destroy the paper records.

Legal Status

In reality, the Certificate of Authenticity is not legally required to admit a record into evidence. Microfilm records have often been introduced into evidence with or without the certificate. The key element regarding admissibility is convincing the judge that the original records and the duplicates are trustworthy. The judge must feel confident that the information contained is authentic, accurate, and trustworthy.

On the other hand, the laws affecting government microfilm require the Certificate of Authenticity. An agency that microfilms without the certificate will violate the law. (However, the microfilm would still be admissible into evidence.)

The Certificate of Authenticity is a False Statement

Why then does this article then advocate the elimination of the Certificate of Authenticity, especially since it commonly

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appears on most rolls of microfilm? Even if the certificate is not required by the laws of evidence, is it not helpful in permitting microfilm to be admitted into evidence?

Under closer scrutiny, the Certificate of Authenticity is actually dangerous from a legal perspective for three reasons:

- The person signing the Certificate of Authenticity does not know that the statements made in the Certificate are true at the time of signing.
- The content of the certificate often proves to not be true.
- The truthfulness of the certificate can only be confirmed at a later time, after the microfilm has been processed and inspected.

Since the Certificate of Authenticity is filmed at the beginning and the end of the roll of microfilm, the camera operator must sign the certificate before actually starting the microfilm process. How does the operator know that the film will accurately reproduce the original, until the actual roll of film becomes visible through processing? In reality, the camera operator is only guessing or anticipating that the film accurately reproduces the original, was prepared in the regular course of business, or includes even these records indicated in the certificate.

Only after the microfilm is processed and inspected does the camera operator really know whether the statements made in the certificate are true or not. In many cases, inspection actually confirms that the statements are not true. When defects in the microfilm are determined after inspection, corrective action is necessary. Either "retakes" are prepared for images that did not adequately reproduce on the film or the entire roll may be refilmed in case of major problems. In either case, the action of making retakes or refilming confirms that the statement originally made in the Certificate of Authenticity was in fact false.

The camera operator does not and cannot know whether the statements made in the certificate are true or not until after the film has been processed and inspected. The procedure of making the statements at a time when their accuracy cannot be confirmed merely discredits the perceived reliability of the operator and the microfilming process.

Attacking the Credibility of Microfilm with Certificates of Authentication

Since the statements contained in the Certificate of Authenticity are either false (as confirmed by retakes or refilming) or made at a time when its truthfulness could not be determined, the existence of a Certificate of Authenticity on a roll of microfilm will compromise or prevent its admissibility into evidence if properly attacked. Up to this point, lawyers have rarely challenged the admissibility of a roll of microfilm, especially when a certificate is included on the roll. Most judges and attorneys have merely acquiesced to this procedure and prefer instead to proceed with other matters related to the case.

Based upon the information presented in the article, however, a skilled attorney can now successfully prevent the admissibility of any records contained on a roll of microfilm by asking the right questions.

Most organizations have not yet been confronted with this problem. We can expect that there will be more challenges in the future. How can an organization expect to introduce a microfilm record into evidence when the first information contained in the roll is either false or made without regard to its truthfulness? Since many judges are skeptical of microfilm or other duplicate records in the first place (although microfilm is admissible in evidence in all 50 states and the federal courts), the suspicions of many judges will be confirmed once a challenge to the microfilm is raised.

The following interchange represents the problem facing an organization who now films a Certificate of Authenticity. It is presented in the form of questions from the defendant's attorney (D-Attorney) to the defendant's Records Manager (who wants to introduce microfilm records into evidence) and cross-examination from the plaintiff's attorney (P-Attorney) who wants to prevent the admission of these records:

D-Attorney: (Looking to the judge...) Your Honor, I would like to call XYZ Company's records manager to the stand to introduce microfilm records into evidence.

D-Attorney: (After records manager is sworn in as a witness...) Are you the records manager of XYZ Company?

Records Manager: Yes, I am.

D-Attorney: Would you please identify the rolls of microfilm that you have brought with you today to court.

Records Manager: These are records of our Accounting Department from 1988 representing accounts receivable records for that year.

D-Attorney: How do you know that these are accurate reproductions of the original paper records?

Records Manager: At the beginning of the roll of microfilm, we filmed the Certificate of Authenticity that says the following: "These are the records of the Accounts Payable Division of the Accounting Department for 1985 and the microfilm was produced in the regular course of business and accurately reproduced the original."

D-Attorney: Who signed that Certificate of Authenticity?

Records Manager: At that time I was the camera operator and signed that document myself indicating the accuracy of our microfilm.

D-Attorney: (Looking to the judge...) Your Honor, I would like to introduce these microfilm records into evidence.

Judge: I have no problem with the microfilm. (Looking at P-Attorney...) Would you like to ask any questions of this witness?

P-Attorney: Yes, I would, Your Honor. (Looking at the Records Manager...) You indicated that you were responsible for producing these rolls of microfilm.

Records Manager: (Looking very confident...) Yes, sir.

P-Attorney: When were these rolls of microfilm filmed?

Records Manager: They were filmed on January 10, 1986, just after we concluded our annual accounting year.

P-Attorney: And when did you sign the Certificate of Authenticity?

Records Manager: I signed it on the same date that the records were microfilmed, January 10, 1986.

Attorney: Did you sign the Certificate of Authenticity before or after you filmed the roll of microfilm?

Records Manager: (Looking a little confused...) Well, I signed the certificate before I filmed the roll of microfilm. Then I took the certificate and filmed it as the first frame on the roll and then continued to film the documents that now appear on the roll.

P-Attorney: So, in order that we all understand, you state under oath that you signed this certificate before you filmed the records.

Records Manager: (Looking a little shaken...) That's correct.

P-Attorney: The certificate states that the microfilm records accurately reproduces the original.

Records Manager: That's correct.

P-Attorney: Did the microfilm accurately reproduce the original at the time you signed the statement?

Records Manager: (Starting to sweat...) Well, I really don't know because I could not inspect the microfilm until three days later, after it had been processed.

P-Attorney: So at the time you signed the Certificate of Authenticity, you had no way of knowing whether the content of the certificate was accurate or not. In fact, you knew that you could not determine its accuracy until three days later.

Records Manager: (Squirming...) I guess that's correct.

P-Attorney: And did the microfilm accurately reproduce the original?

Records Manager: Well, actually it did not. In fact, on this first roll there were about five documents that we forgot to film and about five more that didn't reproduce very well on the microfilm. But that's not too bad since that's only ten problems for 2500 images.

P-Attorney: So what did you do when you discovered some of these documents did not accurately reproduce the original?

Records Manager: Well, we have a procedure for refilming those images and splicing them onto the roll of microfilm.

Attorney: So by the action of refilming these ten documents, you confirm that the microfilm actually did not accurately reproduce the original when it was originally filmed. In fact, you also confirm that the statement that you signed at the beginning of each and every one of these rolls of microfilm often turned out to be false.

Records Manager: (Trembling...) Well, I was just doing what my company told me to do.

P-Attorney: (Turning to the judge and feeling very confident...) Your Honor, I object to the introduction of these microfilm records into evidence. As the defendant's own witness has indicated, we have not idea whether these records accurately reproduce the original or not. To make matters worse, the microfilm contains the Certificate of Authenticity which was clearly a false statement at the time it was made. The Records Manager has indicated under oath that he had no idea whether the statement was true or not at the time of making and, to further upset the apple cart, he has also indicated that in several cases the microfilm in fact did not accurately reproduce the original.

How can we in good conscience admit a record into evidence that starts with a knowingly false statement. Since the original records have not been destroyed, my client has no way of confirming whether the microfilm is accurate or not. The Certificate of Authenticity, in fact, reduces the trustworthiness of the records and compromises the integrity of this entire microfilming program.

These certificates clearly contain false statements. In fact, these false statements are not actually mistakenly false, but in fact are knowingly false. The camera operator knew at the time he was signing these statements that they were in fact false, but merely followed company procedures. This is fraud! Perhaps, these false statements were deliberately made to deceive the court into believing that the microfilm was accurate. The court should not rely on this information since it is not trustworthy.

In addition, my case is severely compromised since I am unable to confirm whether any of this information is correct since the other party subsequently destroyed the original records. My client would be severely disadvantaged if you admit these records into evidence.

Judge: (Looking at P-Attorney...) You know, Counselor, I have regularly admitting microfilm into my courts for years. Most of the parties have merely pointed to the Certificate of Authenticity to convince me of the trustworthiness of the microfilm records. However, after your brilliant cross-examination of this witness, I am convinced that the microfilm does in fact contain knowingly false statements. How can I rely on records prepared by an organization that in fact doesn't even care whether their statements are true or not.

Your points are well taken. Your case would be compromised by the introduction of these records. I cannot confidently admit them into evidence since their trustworthiness is severely compromised by these false statements. I, therefore, sustain your objection.

The request for introducing these microfilm records is denied. (Looking at D-Attorney...) I suggest that your organization revise its practices related to microfilm because I will not accept any microfilm from your company or any other organization that contains these knowingly false statements. Once records have been microfilmed and the original paper destroyed, you have an obligation to convince me of the trustworthiness of the records and your microfilming practices. I find that your current practices are not adequate to convince me of the authenticity of the records and I will not admit them into evidence since the trustworthiness of your practices cannot be confirmed.

D-Attorney: But your honor, we have relied totally on the Certificate of Authenticity to allow us to admit our microfilm into evidence. We have no other information or witnesses to demonstrate the accuracy and trustworthiness of our microfilm and original records.

Judge: My decision still stands as stated. (Looking at -D-Attorney...) Please continue your case without the microfilm records.

Once the records are excluded from evidence, your organization will have the burden of trying to proceed with its case without appropriate records. In many cases, your organization will lose because of the inappropriate microfilming practices, even though the records might exist to support your claims.

How to Identify and Authenticate Microfilm

Microfilm can successfully be introduced into evidence in spite of the problems discussed above. Of course, if the law requires specific procedures related to the Certificate of Authenticity you should follow the law, but also actively work to change the law. The following procedures should then be followed to ensure the admissibility of microfilm records into evidence.

- Do not microfilm a Certificate of Authenticity at the beginning of the roll of microfilm. Instead, you may elect to microfilm a Certificate of Identification to indicate the content of the roll for identification purposes only.
- Once the microfilm has been prepared, processed and inspected, the inspector can then prepare a Certificate of Authenticity. The certificate will confirm that the microfilm was prepared in the regular course of business and accurately reproduces the original. The certificate can also identify problems found in the microfilm and corrective actions that were taken. The certificate should be filed separately from the microfilm and kept along with other records that document the microfilming procedures to confirm the trustworthiness of your microfilm.
- You should maintain documentation of your microfilm system including procedures, standards, logs and other documentation indicating the steps followed in preparing microfilm within your organization. The documentation would also include the Certificate of Authenticity as described above.
- Your microfilm staff should be properly trained. You should maintain a set of training documentation to indicate to the court that the staff has been adequately trained. If your staff is trained there is a high likelihood that they will produce accurate microfilm.
- Besides your normal inspection and quality control procedures, you should undertake audits of the microfilm program. The audits can be conducted by your Auditing Department, disinterested third parties, or outside consultants. The audits should include a fair sampling of the microfilm images to confirm that the microfilm does in fact accurately reproduce the original. This audit should be conducted prior to destruction of the originals so that the microfilm images (or paper prints produced from the microfilm) can be compared with the original documents to confirm their accuracy. The documentation of the audits should be retained to support the introduction of the microfilm into evidence in the future.