



Legal Admissibility of Electronic Documents

BIP 0008:2004 - The BSI Code of Practice

What might happen if you do not conform?

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What is the Code?

The issue of the legal admissibility of electronic documents has been long outstanding, and the subject of many discussions and articles. Expert legal opinion suggests that the issues are best resolved by the creation and implementation of rules of 'best practice'.

In 1993, an open meeting was held at Cranfield University to explore these issues. The result of the meeting was the formation of the Legal Images Initiative (LII), who subsequently developed a set of management principles, around which a statement of 'best practice' could be built.

In parallel to this work, a group of vendors and users under the auspices of the Document Management Suppliers Group (now the Computing Suppliers Federation) developed a set of criteria to be used in the development and use of electronic document management systems, such that they could be operated within the rules of 'best practice'.

In 1994, the Standards Committee of UKAIIM agreed to work with the LII and DMSG, to produce a document that the British Standards Institution could publish as a Code of Practice, as an authoritative statement of 'best practice'. This work concluded with the publication of BSI DISC PD0008 in February 1996.

Throughout the development of the Code, wide ranging support was received from industry, from system suppliers, users and the legal fraternity. This support has continued after publication, with almost 4000 copies of the Code being purchased, and around 1200 people attending various seminars organised by LII and BSI. Not least was the support of Sir Kenneth Warren (past Chair of the Parliamentary Select Committee on Trade and Industry) and The Right Honourable Lord Justice Saville at the LII launch seminar.

In 1999, a new edition of the Code (BSI-DISC PD0008:1999) was published. This edition extended the scope of the Code to include all types of electronic storage media, and gave more details on workflow systems.

In 2004, the 3rd edition of the Code was published. Based on the 1999 version, the Code was subject to extensive editorial revision, enabling easier understanding and implementation. This edition also includes many examples and case studies, based on real applications, to assist in its implementation.

Objectives of the Code

The major influence in the development of the Code of Practice was the commercial desire to destroy original paper documents, and rely upon the electronic versions for use in court cases when necessary. To this aim, the Code contains requirements for the Information Management System itself (hardware and software), and recommendations for the operational procedures implemented by the users of the System.

Often, documents are stored for a considerable length of time on such systems. To be able to claim conformance to the Code, it must be in place (and be seen to be in place) for the whole storage life of the document.

How is it implemented?

Many users of Information Management Systems will be familiar with the implementation of Quality Systems, such as ISO 9000. These implementations take a great deal of time and expense, and require the use of external annual assessors for certification. The Code of Practice does not work in this way.

BSI has also published a 'Compliance Workbook' (BSI BIP 0009), which in conjunction with the Code of Practice, enables self implementation and certification. Resource is needed for this, but such resource should be cost effective as it is likely to lead to a well run Information Management System.

Voluntary or Mandatory?

The Code of Practice has been developed as a voluntary Code. There is no necessity to implement the Code. The fact that the Code has not been implemented will not stop electronically stored information being admitted as evidence to a court of law.

However, the Code details what industry agrees are the best practices for the management of electronic information management systems. If a system does not operate to these 'best practices', then it is not unreasonable to suspect that it is not being well run. This allows an opposing side in a legal case to question the authenticity of the electronically stored information, and put the onus firmly on the presenter of the electronic information to defend their system, and give good reasons why they have not implemented the Code.

Internet and Intranet

The first electronic Information Management Systems were used for archival purposes, storing historical records to reduce store and retrieval costs. Current systems are also being used in work flow systems, controlling the progress of information through an organisation.

Becoming widespread are document repositories, with access provided to all members of an organisation with the use of an Intranet, or to a wide public audience using the Internet.

So, what can be done to ensure the authenticity of such stored information? Part of the answer to this question is to implement the requirements of the Code of Practice in the document repository. This will ensure that 'best practice' is followed in moving information from their original form (maybe a paper document, or a word processor file) onto the Information Management System.

Why should it be implemented?

As can be seen above, implementation of the requirements of the Code of Practice for Legal Admissibility of Information Stored on Electronic Document Management Systems (BSI BIP 0008:2004) will ensure that an Information Management System is being run to 'best practice'. This will increase the confidence with documents stored on the system, and should enable them to be used with the same (or possibly increased) authority as the original documents.

Why increased authority? With the common availability of 'scanning' photocopiers, seamless manipulation of paper documents is becoming common practice. So, can any such documents be used with total confidence? A properly managed Information Management System does not allow such manipulation to take place. It may be that, in a short space of time, an electronically stored document from an Information Management System conforming to the Code of Practice will be perceived to be better than an original paper document!

What about Records Management?

According to the International Standard on Records Management (BS ISO 15489), adequate attention must be given to all information that is "created, received, maintained as evidence and information by an organisation or person, in pursuance of legal obligations or in the transaction of business". As much of this information is nowadays stored electronically, then the Code of Practice is directly applicable. By implementing the Code, organisations are able to store their vital records in an electronic form, minimising the risk of being questioned about their authenticity, and reducing the storage costs associated with paper documents.

Conclusion

If you are intending to use an Information Management System, and anticipate that electronically stored information may be needed as evidence in a court of law, implement the Code of Practice as soon as possible.

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