

Print v. Digital Evidence in Courts of Law

The distinction between the durability of paper and the impermanence of digital documents is clearly manifested in how they are treated as evidence in courts of law. Paper documents—including notices published in a newspaper— are self-authenticating under federal (1) and state rules of evidence, so they can be admitted into evidence at trial without additional proof to support the claim the documents are legitimate. Digital documents require a much higher standard of proof. (2) Some courts have even “expressed deep skepticism about the underlying reliability of digital evidence and subjected it to far greater scrutiny than applied to nondigital evidence when deciding whether to admit.” (3)

(1) Federal Rules of Evidence, Article IX, Rule 902(6)

Rule 902. Evidence That Is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(6) *Newspapers and Periodicals.* Printed material purporting to be a newspaper or periodical.

Paragraph (6). The likelihood of forgery of newspapers or periodicals is slight indeed. Hence no danger is apparent in receiving them. Establishing the authenticity of the publication may, of course, leave still open questions of authority and responsibility for items therein contained. See 7 Wigmore §2150. Cf. [39 U.S.C. §4005\(b\)](#), public advertisement prima facie evidence of agency of person named, in postal fraud order proceeding; Canadian Uniform Evidence Act, Draft of 1936, printed copy of newspaper prima facie evidence that notices or advertisements were authorized.

(2) Federal Rules of Evidence, Article IX, Rule 902(14)

(14) *Certified Data Copied from an Electronic Device, Storage Medium, or File.* Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule (902(11) or (12). The proponent also must meet the notice requirements of Rule 902 (11).

(3) US District Judge Paul W. Grimm, “Authenticating Digital Evidence,” GP Solo – American Bar Association, Vol. 31 No. 5, Sept./Oct. 2014

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