

**EVIDENTIARY ADMISSIBILITY  
AND RELIABILITY  
OF  
PRODUCTS GENERATED FROM  
COMPUTERS**

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Examples where court room acceptance of computer generated products might be critical:

- breach of contract
- negligence
- civil / criminal violations by governmental officials
- etc.

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**Are computer-generated records treated any differently by the courts than traditional forms of evidence?**

Federal Rules of Evidence  
<http://www.law.cornell.edu/rules/fre/overview.html>

**Hearsay rule** almost always applies to files stored in computers and the printouts generated from those files.

“Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

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To be admissible, computer generated products must typically qualify under one of the hearsay exceptions.

**Hearsay Exceptions**

a. Business Records Exception (exception 6)

Requirements:

- record or data compilation in any form (i.e including electronic)
- made at or near the time by a person with knowledge

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- if kept in the ordinary course of a regularly conducted business activity
- and if it was the regular practice of that business to make the record or data compilation
- all as shown by the testimony of the custodian or by a certification that complies with Rule 902(11) or (12)
- unless circumstances indicate lack of trustworthiness

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PLUS record or data compilation must be AUTHENTIC

1. Most jurisdictions.

- showing input procedures to the computer
- showing tests used to assure accuracy & reliability of the computer operations and the information supplied to it and
- record generated and relied upon in the ordinary course of business

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2. A few jurisdictions.

- custodian testifies computer-generated records kept in the ordinary course of business

3. Some judges.

- judicial notice of some off-the-shelf programs

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b. Public Records Exception (exception 8)

Requirements:

- record or data compilation
- in any form
- maintained by a public office or agency

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- as a public record
- setting forth
  - (A) activities of the office or agency, or
  - (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report ..., or
  - (C) ... factual findings resulting from an investigation made pursuant to authority granted by law...
- unless the sources of information or other circumstances indicate lack of trustworthiness

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Additional Means of Admitting Computer Generated Evidence

- a. Demonstrative Evidence - used for explanatory evidence
- b. Evidence relied on by an expert (for limited purposes in some jurisdictions)

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Problem of “trash science”

- Frye v. United States (1923) - reqr'd “general acceptance” in science community, conflicted with intent of fed rules - novel testimony should not be summarily dismissed

U.S. Supreme Court attempts to fix:

- Daubert v. Merrell Dow Pharmaceuticals (1993)
- Kumbo Tire Co. v. Carmichael (1999)

See for instance, Scientific Experts and the Courts  
<http://www.aaas.org/spp/dspp/sfrr/per/per26.htm#cover>  
READ THIS - 3 pages

Federal Rules Revised (Dec 2000) - emphasis on judicial gate keeping, several conditions specified for judges to consider to ensure reliability  
Appellate review test - abuse of discretion (Joiner)

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CONCLUSIONS

Evidentiary differences between digital files of data and conventional record evidence:

- 1) Hearsay rule almost always applied to electronic data files and the products generated from them.
- 2) Authentication as a condition precedent to admissibility tends to be more complex and difficult.
- 3) Reliability and believability of computer printouts may be more difficult to convey to a jury and the general public.

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