Domain 1 Research Questions

Case Study 21:
Electronic Filing System (EFS)
of the Supreme Court of Singapore

Natalie Catto, UBC

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1.1 What types of documents are traditionally made or received and set aside (that is, created) in the course of artistic, scientific, and governmental activities that are expected to be carried out on-line? For what purposes? What types of electronic documents are currently being created to accomplish those same activities? Have the purposes for which these documents are created changed?

- Because the electronic filing system (EFS) mirrors the traditional paper-based one, the main documents generated are the same (but in paper form instead of digital):
  - (1) Statutory Demand: the document served to the debtor demanding payment of owed moneys. Its authenticity and reliability is assured through the act of being signed and dated by the creditor or other person authorized to do so, and through the inclusion of business procedures
  - (2) Bankruptcy Petition: the document filed by the creditor asserting that the debtor has not complied with the statutory demand. Its reliability and authenticity are attested to by accompanying documents:
    - Lodgement Form
    - Affidavit of Truth of Statements in Bankruptcy Petition
    - Affidavit of Service
    - Power of attorney or authority
    - Affidavit of Non-satisfaction (only included if petition effectively served to debtor)
  - (3) Engrossed Order of Court for Substituted Service of Creditor's Bankruptcy Petition: the document served if the debtor cannot be found at his/her place of residence. It is also submitted with:
    - Ex-Parte Summons in Chambers
    - Affidavit in Support of Application for Substituted Service
  - (4) Hearing List: the document that lists the date and time of upcoming hearings. The final document includes the hearing results taken from the minute sheet

    - (5) Engrossed Bankruptcy Order: the document declaring the debtor to be bankrupt. Its authenticity is assured through the fixation of the Supreme Court's seal and stamp. When verified against the hearing list, a hearing report is produced for publication in the Government Gazette, which is later filed in the case file.

- The documents are created for the purposes of filing and serving bankruptcy records within the overall mandate of the Supreme Court, which is "...to enhance access to justice and instill public trust and confidence in the court system."

- Digital entities include the law firm's front end system, digital certificates and the court's internal application system which is also manifested in the form of PDF documents, HTML web pages, XML, Oracle and Filenet databases

- The purposes for which these documents are created have not changed; on the contrary, they have been augmented through the move to e-government. EFS has enabled the Supreme Court to facilitate the filing of court documents, to enable the quick retrieval of court documents, to improve access to records and information, to manage and track cases, streamline workflow processes, and improve case file security

1.2 What are the nature and the characteristics of the traditional process of document creation in each activity? Have they been altered by the use of digital technology and, if yes, how?

- The processes examined in the case study are: filing the bankruptcy petition, filing of summons in chambers bankruptcy, documenting that the bankruptcy petition was effectively served, preparing the bankruptcy hearing, and procedures that take place once the Court grants a bankruptcy order[1]

- Although document creation processes have not greatly altered due to regulation by various court legislations, some alterations have occurred in the switch from the paper to digital environment:
    - Law firms are now required to enter information under the prescribed documentary template in EFS before submitting it to the courts
    - The Supreme Court now manages the public key infrastructure process which results in the issuance of a smart card to only those solicitors that possess valid practicing certificates

1.3 What are the formal elements and attributes of the documents generated by these processes in both a traditional and a digital environment? What is the function of each element and the significance of each attribute? Specifically, what is the manifestation of authorship in the records of each activity and its implications for the exercise of intellectual property rights and the attribution of responsibilities?

[1] The steps involved in each of the processes are listed in point form in the Case Study 21 Final Report.

- Formal elements and attributes include digital signatures, annotations, and electronic seal (and their paper counterparts) with the addition of PKI infrastructure and direct debit transactions, which do not have paper counterparts

- The function of each element is dependent on the workflow and the legislative requirements of the court

- The author of all of the documents created in the course of undertaking the activities mentioned above is the Supreme Court. This is also the perspective taken in the diplomatic analysis and activity model, in that the records were examined in light of the Supreme Court's activities (as opposed to the activities of lawyers, creditors, etc.). Thus, the Court possesses all rights and responsibilities associated with these records.

1.4 Does the definition of a record adopted by InterPARES 1 apply to all or part of the documents generated by these processes? If yes, given the different manifestations of the record's nature in such documents, how do we recognize and demonstrate the necessary components that the definition identifies? If not, is it possible to change the definition maintaining theoretical consistency in the identification of documents as records across the spectrum of human activities? In other words, should we be looking at other factors that make of a document a record than those that diplomatics and archival science have considered so far?

- The documents created and set aside in the course of the activities of the Supreme Court in administering bankruptcy proceedings are records according to the definition adopted by InterPARES 1

- The entities possess fixed content and form:
    - Once deemed to be complete their content cannot be altered (with the exception of annotations and electronic seals)
    - They are affixed to WORM optical disks in a jukebox

- The entities participate in the overall activity of administering bankruptcy proceedings, which include issuing a digital certificate smart card, serving a bankruptcy petition, verifying the petition, conducting a bankruptcy hearing, and publishing the hearing results

- The entities possess an archival bond with the other entities in two main ways:
    - With those entities stored in the same case file (the documentation necessary for each case)
    - With each case file stored by the Court in consecutive order

- Three persons (author, addressee and writer) are evident for each activity undertaken by the Supreme Court:
    - Receive bankruptcy petition: Supreme Court (author, addressee, creator, originator), solicitor (writer)
    - Verify bankruptcy petition: Supreme Court (author, creator, originator), registrar (writer), solicitor (addressee)

    - Approve order of substitute service: Supreme Court (author, creator, originator), registrar (writer), solicitor (addressee)
    - Conduct hearing: Supreme Court (author, creator, originator), duty registrar (writer), official assignee (addressee)
    - Accept bankruptcy order: Supreme Court (author, creator, originator), solicitor (writer), creditor (addressee)
    - Publish hearing report: Supreme Court (author, creator, originator), registrar (writer), general public (addressee)

- The entities also possess an identifiable context:
    - Juridical-administrative: Supreme Court regulations and legislation including Bankruptcy Act, Bankruptcy Rules, and Electronic Transaction Act
    - Provenancial: Singapore Supreme Court comprises the creating body of this case study
    - Procedural: specific phases carried out in the course of administering a bankruptcy petition and conducting a hearing
    - Documentary: employs a uniform file classification scheme
    - Technological: Java/J2EE technology, WebLogi Application server, Oracle and Filenet databases, Visual basic, Public Key Infrastructure, Secure Sockets Layer and hardware encryptors

1.5 As government and businesses deliver services electronically and enter into transactions based on more dynamic web-based presentations and exchanges of information, are they neglecting to capture adequate documentary evidence of the occurrence of these transactions?

- Law firms and the Supreme Court are fully cognizant of the need to produce authentic, reliable, and accurate records
    - The Bankruptcy Act and Bankruptcy Rules ensure the continuation of strict procedural controls over all transactions conducted by the government; the Electronic Transaction Act (1999) directly legislates control over government e-filing services
    - Transactions are also strictly controlled by rules of court, internal work processes and Practice Directions

- EFS is capturing more documentary evidence than the original paper-based system:
    - Bankruptcy case file includes case number, name of debtor and petitioner, case status, and bankruptcy status
    - Case file reference number is consecutive according to the year petition electronically filed
    - Record registry in form of a sub-directory includes record profile of documents related to the case, document number, date the documents were filed, and the document's originator

1.6 Is the move to more dynamic and open-ended exchanges of information blurring the responsibilities and altering the legal liabilities of the participants in electronic transactions?

- Legal liabilities of transactions have not altered
    - Ensure strict control over access and use of records to protect the privacy and confidentiality of involved parties
    - Maintains role of information service provider for establishing creditworthiness of individuals and for setting legal precedents. Law firms wishing to access case files must obtain approval from the Courts

1.7 How do record creators traditionally determine the retention of their records and implement this determination in the context of each activity? How do record retention decisions and practices differ for individual and institutional creators? How has the use of digital technology affected their decisions and practices?

- Record retention practices of the Supreme Court have been in place before the implementation of EFS
    - Case records categorized as essential and non-essential
        - Non-essential: records where no bankruptcy petition is issued, kept for period of one year
        - Essential: records where receiving and adjudication orders not rescinded or annulled, retention decided by Court and National Archives
    - Thus far, migration recommended for active and semi-active records, microfilm recommended for permanent storage of court records, and outsourcing digital certificates to a licensed certification authority to counteract technological obsolescence is being considered
    - No formal long-term preservation strategy

- Since the documentary template and the PDF court record are immediately saved onto the Oracle database and the optical disk after an action is taken, there is no different in the retention practices between the individual and institutional creators

- A motivation for the implementation of EFS was to solve the storage of paper records. At the same time, the court is conscious that despite the availability of digital storage space, ‘it may be more cost effective and efficient to impose stricter retention guidelines with appropriate checks and balances embedded in the work flow to ensure that documents are deleted as soon as they cease to have value, and that only those that require long term storage are retained in an online or offline environment”