

# Find Info Like a Pro

Volume 1

Mining the Internet's Publicly  
Available Resources for  
Investigative Research



Carole A. Levitt and Mark E. Rosch

  
CD-ROM  
included

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## Mining the Internet's Publicly Available Resources for Investigative Research

Carole A. Levitt and Mark E. Rosch

(Previous edition entitled *The Lawyer's Guide to Fact Finding on the Internet*  
by Carole A. Levitt and Mark E. Rosch)



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sel. Another (and probably better) way to save a Web page would be to take a screen shot of it because screen shots are not easily altered. To take a screen shot, simultaneously hold down the **Alt** and **PrtSc** keys on your Windows keyboard and then paste (**Ctrl V**) it into a Word, WordPerfect, or Powerpoint document. Mac users should simultaneously hold down the **Apple**, **Shift**, and number **3** keys to take a screen shot. This will save it to the desktop as a .png image (which can be pasted into a Word, WordPerfect, or Powerpoint document).

Asking the Web site owner to authenticate the contents of his or her page is another avenue. If the Web site owner is the opposing party, this can be more challenging, but do try to elicit a stipulation. If trying to authenticate Web pages that are no longer stored at the Web site in question, but which are now stored at the Internet Archive, "judicial notice and stipulation" are suggested by the Internet Archive and if that fails, their standard affidavit is available (<http://www.archive.org/legal/affidavit.php>). (See the Appendix for a copy of the affidavit.)

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### **Case Law Regarding Authenticating Web Page Evidence from Archive.org**

The most widely cited "case" in favor of admitting evidence from Archive.org, *Telewizja Polska USA, Inc. v. Echostar Satellite*, Memorandum Opinion and Order, Case No. 02C3293 (N.D. Ill. Oct. 14, 2004), actually emanates from a Federal Magistrate Judge's Memorandum Opinion and Order in a *Motion in limine* hearing. The *Telewizja Polska* case is unreported (and thus, not binding on other courts). To read the full text of the Magistrate's Memorandum Opinion and Order, see page 295 in the Appendix. In the *Motion in limine*, Plaintiff *Telewizja Polska* sought to suppress what their Web site pages looked like on various days in 2001 (as displayed at Archive.org). According to the opinion, the pages were potentially damaging to plaintiff's case. In footnote 1, the Magistrate noted, "Coincidentally, Plaintiff claims that it is unable to access any images of its website during the time in question." (Hence, the defendant resorted to relying upon the Web pages stored at Archive.org.)

After the *Motion in limine* hearing, Federal Magistrate Keys rejected plaintiff's claim that Web pages from the Internet Archive Web site were not properly authenticated. He also rejected plaintiff's attack on the Internet Archive Web site as an unreliable source, stating that Federal Rules of Evidence Rule 901 requires only a *prima facie* showing of genuineness and leaves it to the jury to determine the true authenticity. As to admissibility, the Magistrate noted that many prior courts have indicated that hearsay objections to Internet evidence could be overcome. The Magistrate rejected

plaintiff's contention that the archived Web pages stored at the Internet Archive constituted hearsay, finding that they were not "statements" but merely images and text showing what a Web site once looked like. (The plaintiff had alleged they were "double hearsay," no less.) The Magistrate also found that the Web site pages were an admission by a party-opponent and were admissible under the "best evidence" rule.

However, those who want to rely on Magistrate Keys' decision will encounter a slight glitch: District Court Judge Ronald Guzman overruled Magistrate Keys' findings in the *Telewizja Polska USA v. Echostar Satellite*, case. Judge Guzman's opinion is never cited by any authors writing articles about admitting Internet Archive pages (except for one), nor do any judges, deciding similar cases, cite to it. They only cite to the Magistrate's decision. The only article to inform us that District Court Judge Ronald Guzman overruled Magistrate Keys at trial, is from Wikipedia ([http://en.wikipedia.org/wiki/Wayback\\_Machine#Telewizja\\_Polska](http://en.wikipedia.org/wiki/Wayback_Machine#Telewizja_Polska)), not necessarily considered the most trusted of sources. The Wikipedia article offers no citation to back up its assertion that Judge Guzman overruled Magistrate Keys. In fact, the only citation is to an article in the *Journal of Internet Law* and that article cites to the Magistrate's decision.

After sifting through many documents at PACER, we were unable to find the judge's overruling opinion. We then e-mailed Phillip Zisook at Deutsch, Levy, and Engel (<http://www.dlec.com/attorneys/phillipzisook.html>), *Telewizja Polska's* attorney in the case, who confirmed that the Wikipedia article was correct (and was written by someone at his firm). Mr. Zisook also informed us that the ruling was made during trial, thus there was no written opinion or order, and that's the reason no one cites to what actually happened at trial. There's also no trial transcript available because the client did not order one.

The following is what the Wikipedia article ([http://en.wikipedia.org/wiki/Wayback\\_Machine#Telewizja\\_Polska](http://en.wikipedia.org/wiki/Wayback_Machine#Telewizja_Polska)) stated that Judge Guzman held (and confirmed by Attorney Zisook):

The Internet Archive employee's affidavit and underlying Web pages (at *Telewizja Polska's* Web site) were not admissible as evidence.

The employee's affidavit contained hearsay and inconclusive supporting statements.

The purported Web page printouts were not self-authenticating.

In another unreported federal Internet Archive.org admissibility case, *Novak v. Tucows*, No. 06-CV-1909, 2007 U.S. Dist. Lexis 21269 (E.D.N.Y. March 26, 2007), the court explained, in its Memorandum and Order, that plaintiff Novak, "obtained a printout through a web site called the Internet Archive." The court described the Internet Archive as, "[a] digital