

It's hard to be updated from laws of other countries different from your own market, so my reflections here are based primarily on **Spanish law**, which at the same time needs to be harmonized with European Union directives, and has influenced many countries of Latin America.



As one of the last acts (the election was the 20th of November) of the Spanish previous government a Royal Decree of November 18th on Spanish Systems of Archives was published. ([Decreto 1708/2011, de 18 de noviembre, por el que se establece el Sistema Español de Archivos y se regula el Sistema de Archivos de la Administración General del Estado y de sus Organismos Públicos y su régimen de acceso](#)). After reading it several times I cannot stop thinking about how difficult it is to legislate on records and archives in a dual reality, in a transition period between the paper and electronic world.

In countries like Spain, with an archival tradition of many years, an impressive legacy of historical documents and an organization of Archives, in which collections and organizational units guarding them aren't easily distinguishable; the well-meaning attempt approach to **legislate for the two realities may reveal some mismatches**. Here are my views on some controversial issues:

1. In the paper records world, the records location and responsibilities on their custody are the basis on which to perform all record processes. It is logical, therefore, that until producers do not submit records to the appropriate site, under Spanish law any kind of Archive, can be considered records an Archives law do not apply. In the electronic world the paradigm need to be necessarily another, in the world of the "cloud" and changing "team-based" organizational structures try to apply **the model based on the custody and transfer of documents constitutes a high risk of failure**. Legislation that attempts to encompass both realities could create much confusion.

2. The establishment of the **records lifecycle model** by transfer of records between different types of Archives (office, central, intermediate, historical) works well to organize a huge mass of paper and to specialize functions and responsibilities for each type of Archive. But applied to electronic records can produce **unnecessary complications** and, worse at times of crisis, **increase of investment** in information technology need to simulate the different stages, without being very clear about the benefit.

3. **Access** to paper records in public Archives need to be regulated to ensure citizens rights. Principles are the same for electronic records, but the technology would allow more direct access (without failing in security) than paper records, which always require an intermediary agent. Where the law says that to exercise the access to records you have to submit an application, that will be studied and answered in each case, without specify different conditions to digital repositories, is **ruling out the possibility of direct access to electronic records**. For some professionals, including me, the possibility of direct access is the great advantage of technologies to promote a greater degree of transparency.

And finally, as a conclusion, to legislate is always difficult (I know by experience when I have been asked to help), but when scope cover an area in transition, **even more difficult!**