

**ELECTRONIC FILING:
ASSESSING ITS FEASIBILITY FOR TRADE DISPUTES
ADMINISTERED BY THE NAFTA SECRETARIAT
An Analysis of the Issues Involved in the Successful
Implementation of Electronic Filing**

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ABSTRACT

This research paper analyzes the feasibility of implementing electronic filing for case documents filed in North American Free Trade Agreement (NAFTA) Chapter 19 proceedings. The project could eventually prove to be a worthwhile undertaking beneficial to the NAFTA Secretariat and the services it delivers. E-filing would provide an interesting alternative to the way filings are currently handled and archived, offer a new approach to the dissemination of information, and present an attractive solution to the geographical obstacle of a jurisdiction operating simultaneously in Canada, Mexico, and the United States.

This paper reviews approaches taken by other jurisdictions to address the issues associated with e-filing and its potential benefits and challenges. It evaluates the expectations and readiness of NAFTA Secretariat stakeholders pertaining to electronic filing, and considers the elements and questions for a successful implementation.

Two methods of research were used for the benefit of this study. First, a literature review was conducted, which comprised the biggest part of the analysis. It allowed defining the scope of the project and identifying important aspects to any e-filing solution. The review concentrated on identifying issues and concerns critical to the assessment of an e-filing system. Second, a survey was sent to stakeholders to determine: if there was willingness on their part to use an e-filing application, what attributes were essential to such a system, and which challenges offered the greatest barrier to an eventual implementation.

The research was successful and the objectives were attained. It not only confirmed that stakeholders had an interest for the project to materialize, but also that e-filing is feasible in the present NAFTA Secretariat environment. The existing system infrastructure, as well as the

recent projects that were undertaken at the NAFTA Secretariat to improve the administration of disputes, are conducive to the implementation.

In the end, the research paper provides clear and concise recommendations concerning the key steps to improve the chances of success in the NAFTA context. It addresses both the administrative and technical aspects of an eventual implementation. Though not all the approaches considered were feasible or practical, the conclusions outlined in this paper demonstrate major benefits and modest challenges with an electronic filing system for NAFTA dispute settlement proceedings.

I. INTRODUCTION

With the advancement in technology, the way information is provided and exchanged among interested parties, presented in the courtroom, communicated to the public, stored, and archived, is changing. Judicial administration can and should take advantage of these new technological ways of doing business to increase its productivity and enhance services to the public.

The ability of the computer to receive, process, store, retrieve, and distribute large volumes of information, combined with current telecommunications technologies, makes it an essential tool for the administration of justice.¹

The North American Free Trade Agreement (NAFTA) Secretariat² is no exception. It is faced with the same issues as other tribunals: lack of resources, the need for higher quality services, the necessity for better access to information, etc. The Secretariat also faces the challenge of sharing data and information across North America as well as the burden of retrieving archived files from offices in the other national sections. For example, a panel member³ residing in Los Angeles, who is appointed to a case administered by the Canadian Section located in Ottawa, requires a brief filed from a 1995 proceeding, which is archived in the Mexican Section. Just think of the coordination effort, time, and cost associated with getting this document to the awaiting panel member under current practices.

¹ Lawrence P. Webster, Automating Court Systems, National Center for State Courts, Williamsburg, VA, 1996, p. 2.

² The NAFTA Secretariat is a unique organization established in 1994 pursuant to Article 2002 of the North American Free Trade Agreement (NAFTA). It administers the mechanisms specified under the NAFTA to resolve trade disputes between Canadian, Mexican, and United States national industries and/or governments in a timely and impartial manner. It is comprised of a Canadian, Mexican, and United States section located in the capital city of their respective country, Ottawa, Mexico City, and Washington, D.C.

³ Panel members/panelists in relation to disputes under the NAFTA refer to the five individuals who sit on panels to hear disputes and render decisions (i.e. judges).

In this respect, officials from Canada, Mexico, and the United States have brought up, at a meeting of the NAFTA Chapter 19 Working Group, the issue of electronic filing as a possible project to be eventually undertaken and to which this paper is devoted.

For the past several years the NAFTA Secretariat has introduced changes through the use of technology to enhance its services and support to stakeholders. This research paper goes further and explores the potential implementation of electronic filing (e-filing), which is the next logical step in a series of technological advances that have been implemented for improving access to case information and management of court operations of dispute settlement proceedings under the NAFTA.

Electronic filing is an endeavor that requires a great amount of effort to implement, and for which court leaders often underestimate the impact. It is important to recognize the opportunity offered by technology to break with traditions, and to modernize court processes.

While implementation of an electronic filing system is not beyond the capability of most courts, it is a complex activity. If court leaders plan carefully, most of the bumps in the road should be relatively small and manageable.⁴

The purpose of this project is to outline the issues and requirements pertaining to e-filing, and to guide the thought process to initiate discussions among the three national sections of the NAFTA Secretariat and their respective government to implement it. The paper aims to provide a greater understanding of the complex implementation of electronic filing by identifying what it entails, the options available, its merits, and best practices on the way to a more rapid adoption. A complementary objective is to raise the awareness of court leaders and government officials regarding what electronic filing means for their organization as well as for stakeholders, and the benefits that can be derived from its implementation. It is crucial that the judiciary and court

⁴ James E. McMillan, J. Douglas Walker, and Lawrence P. Webster, A Guidebook for Electronic Court Filing, National Center for State Courts, Williamsburg, VA, 1998, p. 205.

administrators be well informed of the potential benefits as well as the key issues that arise from the implementation of e-filing. The paper does not provide all the answers, but raises key questions to be considered to get the e-filing project off the ground.

The implementation of electronic filing should have a significant impact on the quality of services delivered to stakeholders and on the way case administration is carried out. The manner in which the three NAFTA Secretariat national offices share data, transmit documents, disseminate information, and archive official case pleadings should, as a result, be improved.

Some of the potential benefits might include:

- a) Improving the performance of employees by re-aligning their responsibilities, having them spend less time on paper processing and more time on providing services and administering disputes.
- b) Facilitating the work of panel members by providing easy access to documents in disputes before them and the possibility to research other cases.
- c) Enhancing the transparency of the NAFTA dispute settlement process and public access, which is one of the main concerns of any court/tribunal administration.

It is obvious that courts will benefit from electronic filing, but one must evaluate what solution provides them with the most efficient and practical system. Requirements must be identified, alternatives explored, and approaches chosen that best serve the needs of both the court and the practitioners.

The following pages describe the methodology used to achieve the goals of the research and discuss the NAFTA Secretariat's recent undertakings and existing system environment. The paper defines electronic filing and reviews the concept of filing documents electronically. It examines what other courts/tribunals have done. It also describes the expectations and readiness

of stakeholders who participate in NAFTA disputes. The research's main focus is on the requirements and the issues to be addressed for the successful implementation of electronic filing.

In the end, some recommendations are listed to guide court administrators in their decision making process. This study will hopefully serve as a document of reference for a future committee responsible for the implementation of an e-filing system for NAFTA panel reviews.

II. METHODOLOGY

This research paper sought specifically to concentrate on the following objectives:

- Define electronic filing;
- Identify what courts have done in regards to electronic filing;
- Recognize potential benefits and challenges;
- Assess the readiness and expectations of NAFTA Secretariat stakeholders;
- Consider the feasibility and issues surrounding implementation; and,
- Make recommendations for the implementation of e-filing for the NAFTA dispute settlement process.

In order to achieve these objectives, two complementary approaches for analysis were adopted: a literature review and a stakeholder survey. When put in the NAFTA context, many of the observations emanate from my personal experience of twelve years spent at the NAFTA Secretariat, and the knowledge developed through on-going liaison with the other two national Sections and trade officials from the governments of the three countries.

The literature review was the primary method of research and analysis used for purpose of this paper. All literature reviewed was in the context of approaches to electronic filing in Canada and the United States. Most publications on Mexico's effort were in Spanish, which created an obvious obstacle. The review of publications, books, periodicals, websites, etc. was undertaken at the beginning of the study and contributed to the general familiarization with the electronic filing concept. This activity, in the early stage of the project, was necessary for the development of the project outline. It was important to initially review materials in order to organize the ideas that would form the essence of this research paper. Once the scope of the research was defined, the literature review was further expanded to address three major components:

- Readiness;
- Feasibility; and,
- Implementation.

The initial intent was to define electronic filing, and then, to further research each component under examination in order to answer relevant questions. Among other things, the literature review facilitated the identification of what had been done in Canada and in the United States pertaining to e-filing, and also helped to explore the possible approaches to an eventual implementation of e-filing in the context of the NAFTA dispute settlement process. Most of the recommendations contained in this paper are based on what other comparable jurisdictions have achieved, and from lessons learned from their direct involvement and participation in the process. Furthermore, the literature review allowed for the identification of potential benefits and challenges of an e-filing system, both of which are very important elements of any business case.

Information found in the literature review also played an important role in shaping the other research and analysis instrument: the surveys. It allowed the examination of surveys used by other organizations and the identification of pertinent questions to be asked in the questionnaires to NAFTA stakeholders. Two surveys served as models for the ones undertaken as part of this research work: 1) the Court Technology survey sent in June 2005 to State Courts by the *National Center for State Courts* and provided by James E. McMillan, Principal Court Management Consultant; 2) a 2002 comprehensive questionnaire developed by COMPAS Inc.,⁵ a firm commissioned by the Supreme Court of Canada and the Federal Court of Canada to survey the Canadian legal community to explore the issues related to electronic filing.

Two separate surveys were drafted for the purpose of this research paper: 1) one for panel members who adjudicate NAFTA cases and 2) the other for counsel who represent parties in NAFTA proceedings. Both questionnaires were similar but did have some questions that varied since the reasons for using the e-filing system are somewhat different for each group of

⁵ COMPAS Inc. is an independent multi-audience research firm.

respondents. A Canadian Section staff member, two panel members, and an independent consultant pre-tested the surveys. All had but minor suggestions to offer which were taken into consideration and incorporated into the final documents.

At this point, it is important to clarify that members of the legal community who deal with trade disputes under the NAFTA are very few compared to those involved in other jurisdictions. This restricted the number of potential participants in the two surveys. The criteria used to identify panelists and attorneys were: 1) those arbitrating or pleading cases presently, or 2) those that had been involved in NAFTA trade matters over the last five years and who might do so again in the future. In the end, all individuals identified were included in the study and 99 questionnaires were sent out by regular mail to potential respondents at the beginning of August 2005 (Appendices A, page 81 & B, page 86). These surveys were accompanied by a covering letter (Appendix C, page 90) explaining the reason for the survey and guaranteeing the anonymity of respondents. Of those surveyed, 49 were panel members (22 from Canada and 27 from the United States) and 50 were counsel (16 from Canada and 34 from the United States).

A total of 48 surveys were returned, a response rate of 48%: 19 from counsel and 29 from panel members. Data was collected through the months of August and September, and analyzed in October. All results are in percentage form as some questions had a very low level of respondents (given the small community that was surveyed). However, since the outcome seemed to be in line with the literature review, as well as with the results obtained from the larger Canadian community survey, the findings were reported as is. A descriptive summary of the results can be found under Section VI "Expectations and Readiness of Stakeholders" and complete results are provided in Appendix D (page 91).

III. BACKGROUND

For the past several years, the NAFTA Secretariat has been improving services provided to its stakeholders by, among other things, modernizing operations through the enhancement of its systems. In this respect, the advancements in technology have been utilized in different ways to facilitate the work of staff in the administration of panel reviews,⁶ as well as in the dissemination of information. The three undertakings below are intended to describe the context that presently exists at the NAFTA Secretariat in order to properly assess the feasibility of e-filing as the next logical improvement.

a) Document Management System

The first major improvement involved the development of a fully relational database to manage cases. This application, known as the NAFTA Registry Information System (NRIS), which is in fact the document management system (DMS) of the Secretariat, is a web-enabled system which uses Internet technology and communication methods to process transactions (grant access, data entry, reporting, etc.). The Internet has proven to be the most appropriate environment to facilitate the exchange of information between the offices of the three national sections of the Secretariat, being that they are located in the capital city of their respective country (Ottawa, Mexico City, and Washington, D.C.). All data resides on a single server and the Internet allows instant access to the information entered into the system by staff in any of the three countries. Application users, who presently consist exclusively of the employees of the three sections, access the system by means of a username and password through a specific

⁶ For purposes of this research paper, “panel review” refers to the term used in the NAFTA to designate a case.

Uniform Resource Locator (URL)⁷ on the Internet. The NRIS is presently used to record all information in cases such as filings, participants and counsel, panel members, etc., and to manage the calendar of events for each panel review. It is the main source of data collection and information for all panel reviews.

b) Website

The next key project undertaken to improve the delivery of services was a complete revamping of the existing website. The website's technology, configuration, look and feel, as well as the content provided were improved in order to provide easier access to the information found on the site. Efforts were made to use technology that would allow interoperability between the website and the NRIS, always keeping in mind a possible and eventual electronic access to case documents by way of the Internet. Furthermore, the means of storing data, on both applications, was a key programming issue in the event that a decision was made to provide access, through the website, to some of the information contained in the NRIS. It was important for the technologies used in both systems to be compatible.

c) Digitization

The most recent enhancement initiated was to digitize (scan) all pleadings (briefs, motions, decisions, and other papers)⁸ from completed panel reviews and to publish them on the document management system (i.e. NRIS). An analysis of the different electronic formats available to convert the paper documents was carried out and it was decided, after careful

⁷ The URL is a global address of documents and other resources on the World Wide Web.

⁸ All non-confidential documents filed in panel reviews administered by the Canadian Section dating back to the implementation of the Canada-United States Free Trade Agreement (CUFTA) in 1989 were scanned and imported into the document management system (i.e. NRIS). Mexican and U.S. cases are scheduled for scanning within the next few years.

review, that documents would be digitized into a Tagged Image File Format (TIFF)⁹ for archival purposes,¹⁰ and then converted to Portable Document format (PDF). It is important to note that when converting from TIFF to PDF, optical character recognition (OCR) is performed to create a text file of the document. This additional step in the conversion from paper to digital format creates a fully searchable version of the PDF files. The electronic text file, which is neither accessible nor viewable to users, is an essential element that allows an eventual key-word search engine to be added to the system. Of the two formats produced from the initial TIFF image (PDF and text), the PDF file is the one posted on the NRIS.

The Canadian Section of the NAFTA Secretariat has proceeded with the imaging of its case documents, which are now accessible by a simple click of the mouse through the web-enabled DMS. All paper documents filed in completed Canadian panel reviews have been scanned and imported to the NRIS. In active cases, documents are being digitized upon filing, imported to the DMS and, when the case is completed, a CD-ROM is created which contains all non-confidential electronic pleadings in that review. Any individual who has a user identification and password is able to read, download, and print the full contents of the imaged documents.

The objectives behind the digitization project were threefold: preservation – access – research. By the simple modification of the NRIS and the implementation of a scanning process, the Secretariat addressed the preservation and access of documents. The last stated objective would be achieved as part of a probable future enhancement involving the development of a search engine for case pleadings. The eventual implementation of an electronic filing system

⁹ One of the most widely supported file formats for storing bit-mapped images on personal computers.

¹⁰ At the time of the review of the available formats, TIFF was the one accepted by the National Archives of Canada. It was used in anticipation that the NAFTA rules would be amended to allow for the digital file to become the official record.

would greatly facilitate the attainment of these objectives by providing an alternative means to obtain electronic formats of documents, given that scanning without e-filing is not practical because of the high cost of converting paper text to an image format. Scanning would then become a backup to the electronic filing of documents.

When embarking on these projects to improve service delivery, the intent was to have all the applications interoperable with one another and to eventually grant access to these systems not only to panel members, but also to panel review participants, to the governments' party to the Agreement, and to the public. These improvements could well become the foundations for an eventual electronic filing system. The website would serve as the gateway to the document management system for judges, as it already does for Secretariat staff, as well as become the place for litigants to file electronically, and for the public to access case pleadings through a search engine. The document management system would be the official library of all documents. Enabling in-house scanning for past, present, and future documents filed in paper format prior to the eventual implementation of e-filing, will actually allow for the transformation into electronic files of those documents that cannot be captured electronically at the source upon implementation.

In the short term, the document management system, the new website, and the document imaging undertakings are likely to be an essential part of a more comprehensive electronic filing initiative in the future. Everything is in place for the eventual adoption of electronic filing if the stakeholders can be convinced of its benefits.

IV. WHAT IS ELECTRONIC FILING?

The first objective of the literature review was to collect information in order to help define electronic filing. Various definitions of e-filing exist, ranging from the simple action of submitting documents by electronic process, to the development of more complex systems that include a variety of sub-functions. Simply defined, electronic filing consists in transmitting a document by electronic means. Others interpret the terms “electronic filing” as referring only to the process by which documents are submitted to a court for filing. But this aspect is only one part of a mature, end-to-end electronic document process.

A guidebook developed by the *National Center for State Courts* (NCSC) provides a more comprehensive definition:

Electronic filing is the process of transmitting documents and other court information to the court through an electronic medium, rather than on paper. Electronic filing lets people get more of their work done with their PCs, to send and receive documents, pay filing fees, notify other parties, receive court notices, and retrieve court information.¹¹

Historically, electronic media have included fax filing, CD-Rom data transfer, modem-based online services, and more recently e-mail.

With the evolution of the Internet, e-filing has been redefined. Today, Internet-based electronic filing and service is rapidly replacing other less capable and less dependable approaches. When properly implemented, e-filing is a highly secure and reliable method for sending, receiving, and managing legal documents and case information.¹²

Electronic filing helps attorneys get documents to the court more quickly. It also takes advantage of the fact that those lawyers create most documents they file with courts using their own computers. Documents are prepared in the same fashion as before, but sent electronically.

¹¹ McMillan, Walker, and Webster, *Supra* note 4, p. 2.

¹² Travis Olson, Esq., Marsha Edwards, and Hon. Arthur M. Monty Ahalt (ret.), *A Guide to Model Rules for Electronic Filing and Service*, LexisNexis File & Serve, 2003, p. 4.

It is the word processing file that is transmitted instead of the paper format (although e-filing is not as simple as attaching a document to an e-mail). Lawyers are usually required to send documents in a particular format, ideally one that locks the document's appearance so that the screen matches the hard copy page-for-page and line-for-line.

Another important aspect is that the e-filing system creates an electronic envelope in which the contents are placed for the secure transmission of digital information between litigants and the courts.¹³ Furthermore, when required by the rules of procedure, the envelope is also used for the "electronic transmission of documents to a party, attorney or representative".¹⁴ This process is known as electronic service.

Electronic filing facilitates the transfer of information and allows access by many individuals simultaneously from different locations. "... it is changing the way courts interact with each other, with lawyers, and with the public."¹⁵ It combines existing court technologies with new ones producing cost savings and greater process efficiency. Electronic filing is the process that allows the electronic transfer of documents, which would traditionally be filed as paper, to and from the court and between parties. It also provides access to electronic versions of those documents.

¹³ Hon. Jean-Jacques Fleury (ret.), "E-filing for the courts in Canada (an idea whose time has come)", Lex Electronica, March 2002, p. 19.

¹⁴ Olson, Edwards, and Ahalt, *Supra* note 12, p. 8.

¹⁵ Kala M. Finn, "Electronic Filing Trends in 2002: The Paperless Law Practice", Knowledge & Information Services, National Center for State Courts, November 25, 2002.

V. LITERATURE REVIEW

The embryonic world of electronic filing has certainly evolved during the past few years. Judicial studies have concluded that electronic case filing offers the potential to greatly enhance court services. One does not have to look far to find electronic filing projects in the administration of justice. “Legal jurisdictions around the world are motoring down the digital highway and embracing electronic filing as a means to enhance their justice systems.”¹⁶ Efforts are underway to computerize every aspect of case and document management, as well as court filing.

Example of these projects range from simple e-mail based systems to more complex elaborate (technologically-based) offerings. The one universally accepted medium for exchanging information¹⁷ and the only realistic option for courts that are launching an electronic filing project appears to be the Internet. This reality suggests that e-filing solutions should be web-based. It also supports the recent enhancement initiatives of the NAFTA Secretariat, which were developed using Internet technology.

Careful analysis is required before an Internet-based e-filing system can be developed. Two fundamental principles need to be considered: “... firstly, to assess the needs of the individuals who will be using the system and secondly to devise a system that will meet those needs, without forgetting the need for expansion of any new system”.¹⁸ Selection and development of systems depend on the needs of each court. Some courts have chosen to develop their own system, while others have turned to third-party vendors. Many of the electronic filing

¹⁶ James C. Middlemiss, “The Courts in a Digital World: Building a Canadian Electronic Filing Marketplace”, Feasibility Report: Electronic Filing Service Provider Model, September 2002, p. 153.

¹⁷ “Standards for Electronic Filing Processes (Technical and Business Approaches)”, prepared by the Electronic Filing Standards Subcommittee of the National Consortium for State Court Automation Standards, February 26, 2003, p. 4.

¹⁸ Fleury, *Supra* note 13, p. 21.

projects that courts have adopted appear to be an extension of case and document management systems.

In reviewing the literature that exists in Canada and the United States pertaining to electronic filing, it seems that as far as the Canadian courts are concerned, electronic filing is still in its early life. Accordingly, most of the publications, reports, books, and websites that were consulted came from U.S. courts and organizations.

One publication that has proven to be a valuable ground-breaking source of information for this research is A Guidebook for Electronic Court Filing¹⁹ published by the *National Center for State Courts*. This book is an excellent resource as it deals with all the elements to bear in mind re: e-filing. It helped identify issues and questions to be addressed when considering such a significant project.

Another publication that outlines detailed principles necessary for electronic filing (and that complements the previous publication) is the Standards for Electronic Filing Processes (Technical and Business Approaches),²⁰ submitted in 2003 to the Conference of State Court Administrators (COSCA) and the National Association for Court Management (NACM) Joint Technology Committee. The standards are comprised of three interconnected sections: 1) a set of policy standards that include suggested rules and policies; 2) a general conceptual model of the electronic filing process; and 3) functional standards that set forth the requirements for automated applications. These two documents together, the NCSC guidebook and the standards manual, form reliable reference tools for organizations thinking about e-filing.

Other important elements to consider when implementing electronic filing were identified by reviewing what courts have done on the subject, the type of system selected, the environment

¹⁹ McMillan, Walker, and Webster, *Supra* note 4.

²⁰ Standards, *Supra* note 17.

the system operates in, and once again, the issues and concerns that have to be addressed. Some of the essential elements mentioned were technology requirements, security, access, and file formats:

- What type of security access is necessary?
- How to best make files available for geographically dispersed panel members²¹ and staff? The fact “that they are likely to be in separate cities, creates a challenge for communication and dissemination of case materials”.²²
- How to share case file information among multiple users simultaneously?

A number of courts have initiated electronic filing projects or are already accepting documents in formats different than paper. Some projects have “used a combination of electronic mail and ‘smart’ forms or documents”²³ to generate the improved services that have been promised by e-filing. These forms provide for specific mandatory data to be captured and ensure control on the look of the documents, which are prepared “off-line”; the actual file is attached to an e-mail message, and the data is used to update the document management system. This approach could be interesting for a small jurisdiction like NAFTA.

²¹ Panel reviews are heard by a panel of five members named by the Governments’ party to the dispute.

²² “Electronic Case Files in the Federal Courts: A Preliminary Examination of Goals, Issues, and the Road Ahead”, Discussion Draft, March 1997, p. 44.

²³ James E. McMillan, “The State of E-Filing”, National Center for State Courts, 2000.

Table 1: E-Filing Features by Jurisdictions Examined

<u>Jurisdiction</u>	<u>Characteristics of Approach</u>	<u>Notes</u>
Ontario, Canada	<ul style="list-style-type: none"> • Forms/templates can be downloaded • Transmission via e-mail 	Too many electronic formats are supported
Supreme Court of Canada & Federal Court of Canada	<ul style="list-style-type: none"> • Single service provider for multiple courts • Allows filings to the court and exchange of documents among litigants 	Approach is complex and expensive
U.S. Court of International Trade (CM/ECF)	<ul style="list-style-type: none"> • Internet used as communication medium • PDF is the accepted format • 24/7 access • Automatic notification of receipt to filers and of filings to other parties • Access to system through username and password • Hyperlink to the document from the docket entry • Non-confidential documents only 	<p>Most interesting e-filing solution for the NAFTA Secretariat</p> <p>Uses readily accessible technologies (such as web, PDF, etc.)</p>
North Carolina Supreme Court	<ul style="list-style-type: none"> • Internet used as communication medium • Pilot project with 20 law firms • Paper follow-up was initially required but no longer the case • Allows electronic service 	
Federal Court of Australia	<ul style="list-style-type: none"> • Internet used as communication medium • Access to system through username and password • Document attached to web page and submitted from that page • Notification of acceptance of filing • Flexible format 	<p>Supports too many electronic formats</p> <p>Feasible e-filing approach for NAFTA disputes</p>

a) Canada

The province of Ontario was one of the first Canadian provinces to dip its toes in the e-filing waters. It began to pilot a system in September 1997, as part of a wider initiative known as the Integrated Justice Project.²⁴ Ontario made forms and templates available for attorneys to download and use as the basis for their filing. These forms could be submitted through e-mail. One of the concerns with the Ontario project is that it supports multiple types of forms and templates (e.g. WordPerfect, Microsoft Word, etc.) and, with the numerous amounts of filings received each day, this has been somewhat of a problem. Courts would be well advised to restrict the number of acceptable electronic formats to only one that conforms to the original document page-for-page and line-by-line.

In Canada, another undertaking included some 40 or so organizations who joined the “*E-Filing Project Advisory Committee*” (EPAC),²⁵ a federal initiative which was established to simplify the interchange of information between the many stakeholders, and whose purpose was to set electronic document standards for the preparation of legal documents. The committee advocated the use of Extensible Markup Language (XML) and approved the adoption of open standards for the development of applications.

In 2002, the Supreme Court of Canada and the Federal Court of Canada became involved in the assessment of the technical feasibility of an e-filing service provider (EFSP) model. They explored ways that could allow the transition to electronic means of exchanging and managing

²⁴ “Ontario launches electronic pilot to bring civil justice system into 21st Century”, Press Release, Ontario Ministry of the Attorney General, Sept. 9, 1997, quoted by James C. Middlemiss, “The Courts in a Digital World: Building a Canadian Electronic Filing Marketplace”, Feasibility Report: Electronic Filing Service Provider Model, September 2002, p. 191.

²⁵ E-Filing Project Advisory Committee website at <http://epac.fct-cf.gc.ca> (accessed June 29, 2005).

their information.²⁶ With that in mind, they entered into a cooperative agreement with QuickLaw Systems and SOQUIJ,²⁷ and Juricert Services²⁸ for the development and demonstration of a system that would allow practitioners through a single service provider to file documents into multiple courts.²⁹ The plan was to use a secure web-based electronic gateway and a private sector service provider that legal counsel would utilize to file documents in electronic form, and also to exchange documents among litigants. They hoped these three new players would facilitate the transition to electronic media by the Canadian justice system.

As part of their assessment of the EFSP model, the Supreme Court along with the Federal Court of Canada surveyed lawyers nationwide³⁰ to obtain their perception, needs, and concerns pertaining to electronic filing. Their survey was reviewed closely as part of this research and became the foundation for the questionnaire used to poll NAFTA stakeholders. The results of the surveys are covered in Section VI on the “Expectations and Readiness of Stakeholders”.

Although the extensive documentation concerning the EFSP model was quite helpful in identifying critical issues to determine the feasibility of any e-filing system, the approach itself was not deemed appropriate to the needs of the NAFTA Secretariat considering its limited jurisdiction. Because the NAFTA dispute settlement process is specific and restricted to trade disputes that are limited in number compared to other federal jurisdictions, it is difficult to imagine following the EFSP model which is more suitable to larger jurisdictions with a higher volume of filings. This model would also be too costly and complex to implement. As well, the

²⁶ Daniel Poulin, “E-filing in Canada: Comments on the E-filing Service Provider Model”, Feasibility Report: Electronic Filing Service Provider Model, September 2002, p. 13.

²⁷ QuickLaw Inc. and SOQUIJ are legal research and data providers.

²⁸ Juricert Services Inc. is an initiative of the Federation of Law Societies offering digital authentication for members of the legal community.

²⁹ “Feasibility Report: Electronic Filing Service Provider Model”, Commissioned by the Office of the Registrar, Supreme Court of Canada, September 2002, p. 9.

³⁰ The Supreme Court of Canada and Federal Court of Canada commissioned COMPAS Inc. to conduct a survey among members of the Canadian legal community.

infrastructure is already in place at the NAFTA Secretariat to find a solution that would allow electronically filed documents to be easily managed and transmitted to partners (i.e. national sections, panelists, attorneys, etc.) instead than through a service provider.

The EFSP model along with the one conducted in the Toronto region, were the major experimental projects that Canada embarked on with a mission to improve the exchange of information between lawyers and courts through the use of electronic technology. These e-filing projects have highlighted the need for the creation of a Canadian organization dedicated to the development of standards to provide a common model for electronic filing processes, similar to those in the U.S., to be used by the justice system and the legal community.³¹

More recently, in October 2005, LexisNexis³² Canada launched an electronic filing pilot project with the Courts Administration Service (CAS). Canadian lawyers can now file documents electronically in intellectual property proceedings before the Federal Court. The CAS has approved the development by LexisNexis of an e-filing service provider solution tailored to the needs of Canadian courts, administrative tribunals, law firms, and lawyers.³³

b) United States

In the United States, projects are far more numerous and a lot has been learned. The development of electronic filing in the United States federal courts has drawn much praise. One must recognize that the “Case Management/Electronic Case Files” (CM/ECF) of the U.S. federal courts³⁴ and the “Public Access to Court Electronic Records” (PACER) projects are resounding

³¹ Poulin, *Supra* note 26, p. 72.

³² LexisNexis is a leader in comprehensive and authoritative legal, news, and business information and tailored applications.

³³ “LexisNexis E-Filing Service Increases Control over Case File Mgmt.”, Canadian Press Newswire, October 4, 2005.

³⁴ As of October 2005, CM/ECF systems are in use in the United States in 82 district courts, 88 bankruptcy courts, the Court of International Trade and the Court of Federal Claims, and most of these are accepting electronic filings (http://www.uscourts.gov/cmecf/cmecf_about.html - accessed on October 3, 2005).

successes.³⁵ It is interesting to note that readily accessible technologies - such as PDF, e-mail, web, and common relational database manager – were used to create these systems.

i) U.S. Court of International Trade

For the purpose of this research, one of the relevant organizations that implemented the CM/ECF system is the U.S. Court of International Trade (CIT). The CIT is a jurisdiction litigants in the United States can choose to have their trade matters heard instead of filing their appeals with the NAFTA Secretariat. The implementation of the CM/ECF³⁶ system at the CIT deserves a closer look since their procedures are probably comparable to the NAFTA Secretariat ones, especially for those cases that could have been initiated under the NAFTA provisions.

The CM/ECF system, a case management and electronic docketing system, enables the Court and the Bar to interact electronically via the Internet. Counsel are able to file documents and the Court is able to serve orders and opinions electronically using the Internet. Counsel, parties, and the public have instantaneous access to case information and documents at any time.

The CM/ECF system uses standard computer hardware, an Internet connection and a browser, and accepts documents in Portable Document Format (PDF). The system is easy to use – filers prepare a document using conventional word processing software, then save it as a PDF file. After logging on to the court's web site with a court issued password, the filer fills out several screens with basic information relating to the case, party and document being filed, attaches the document and submits it to the court. A notice verifying court receipt of the filing is generated automatically. Other parties in the case then automatically receive e-mail notification of the filing.³⁷

When compiling survey results, some U.S. lawyers, who had experience using the above-mentioned system, identified the CIT as an example the NAFTA Secretariat should follow.³⁸

With the CM/ECF, users may access PDF attachments through a hyperlink that appears with the

³⁵ Poulin, *Supra* note 26, p. 37.

³⁶ With the CM/ECF, each court goes through an implementation process that takes about 10 months.

³⁷ <http://cit.uscourts.gov> (accessed on August 5, 2005).

³⁸ Comments gathered from the returned electronic filing survey for counsel.

docket entry. As previously mentioned in the background section, this last feature of accessing pleadings is already available for staff on the NAFTA Registry Information System (NRIS) for documents that have been digitized. Currently, only non-confidential documents are available through the CIT system, which would be the most probable solution for NAFTA pleadings since confidential documents are not maintained by the Secretariat after completion of a panel review. The CIT approach is very interesting and should be kept in mind.

ii) North Carolina Supreme Court

As well, the North Carolina Supreme Court became the first state appellate court to accept the electronic submission of a brief.³⁹ It was approved for a grant from the State Justice Institute to create an Internet-based system for filing and retrieving briefs, petitions, motions, and other appellate court records, and to test the process with 20 law firms prior to full implementation. After several dozen documents had been successfully filed, the court was ready to accept electronic submissions without follow-up paper documents. The North Carolina Supreme Court also modified its rules to allow for electronic service⁴⁰ when a document is filed electronically. Due to the fact that the NAFTA Secretariat does not have to exchange information with many law firms, the testing phase should be done with a pre-determined panel review instead of specific lawyers before permitting electronic filing in all cases.

iii) Other Examples

Other successful implementations include the State of Colorado that became the first State to implement a statewide electronic filing system of all their general jurisdiction courts,⁴¹

³⁹ Christie Speir Cameron, "State Supreme Court offers e-filing", Electronic Filing in the Supreme Court of North Carolina, July 2001, p. 10.

⁴⁰ See note 14.

⁴¹ <http://www.courts.state.co.us/ct-index.htm>.

similar to the attempt in Canada with the electronic filing service provider model. More recently, California courts initiated their *Second Generation Electronic Filing Specifications Project* that seeks to develop a new generation of electronic filing specifications.⁴² The Northern District of Ohio began receiving electronic filings in January 1996. As of April 1st, 2005 the Court strongly encourages attorneys to file their documents electronically.⁴³ Even if successful stories are numerous, some projects have failed and a closer examination has revealed two main causes: lack of technology standards and small budgets.

To summarize, a number of courts on both sides of the border have developed, or are in the process of designing, their own electronic filing system.⁴⁴ What most courts in the U.S. are doing is to:

- Accept the electronic submission of data and the accompanying document;
- Allow viewing and use of the document for internal case processing by the court, the submitting entity and parties to the case; and,
- Permit the public to access and view filings.

One important observation that can be derived from the American experience is that simple technological choices can give rise to an effective system: an excellent example of this is the CM/ECF, which relied on readily accessible technologies.

⁴² <http://www.courtinfo.ca.gov/programs/efiling/standards.htm> (accessed on July 13, 2005).

⁴³ http://www.ohnd.uscourts.gov/Electronic_Filing/Filing/filing.html (accessed on July 14, 2005).

⁴⁴ Discussion Draft, *Supra* note 22, p. vii.

c) Other Jurisdictions

The Federal Court of Australia has adopted an approach called *eCourt* to implement new ways of doing business, improve access to the justice system, and make its operations more efficient. “The *eCourt* strategy comprises a number of initiatives: e-filing, an ‘On-line Forum’, a case management system (CMS), a document management system and more.”⁴⁵ This approach is being implemented in four stages and the court is now able to receive electronic documents.

The Federal Court of Australia’s approach would probably be applicable to NAFTA disputes. All that is required is for the filer to visit the court’s website, visit the page for filings and forms, and provide their username and password. From there, documents can be attached to the web page and submitted. Once court employees accept the document, a confirmation of acceptance is sent to the filer in the form of a PDF document. The Federal Court of Australia is flexible when it comes to document format: the only requirement is that it be printable in the content and form in which it was created. However, we know from other experiences that a lack of standards among attachments filed has the potential to result in version problems and to create difficulties in opening and reading the attachments.⁴⁶

Further to the examination of these national jurisdictions, the recent paper written by Lynn Sudbeck, Institute for Court Management (ICM) Fellow, about *Placing Court Records Online*⁴⁷ for the South Dakota Unified Judicial System, was reviewed to address some questions about publishing court records on the Internet. Her research raised valuable points to be considered by other courts/tribunals, but nothing in the North American Free Trade Agreement or the *NAFTA Rules of Procedure for Article 1904 Binational Panel Reviews* (Rules of

⁴⁵ Poulin, *Supra* note 26, p. 33.

⁴⁶ Middlemiss, *Supra* note 16, p. 182.

⁴⁷ Lynn Eicher Sudbeck, “Placing Court Records Online: Balancing Judicial Accountability with Public Trust and Confidence”, May 2005.

Procedure) prevents the dissemination of non-confidential documents nor do the pleadings contain any information that might be sensitive to individuals. Therefore, the legality of posting NAFTA case documents online does not seem to raise any serious concerns and will be no different than providing hard copies of non-confidential pleadings over the counter.

In summary, the literature review has shown that numerous options exist for courts wanting to implement electronic filing and that many elements have to be considered. Many electronic filing projects throughout the world have already produced valuable lessons that other courts planning such projects can draw from.

d) Potential Benefits

The literature review also identified a number of potential benefits typical to any electronic filing system as well as common challenges.

Table 2: Benefits and Challenges to Electronic Filing

<u>Benefits</u>	<u>Challenges</u>
Reduction in paper Increased information accessibility Improved efficiency Interoperability of systems Full-text search capability Cost reduction Efficient communication Better security 24/7 access Effective storage	Security Transparency and openness v. privacy System failure or unavailability Education of users Complex and time consuming

Can courts reduce costs, improve customer service, and better share information through the implementation of electronic filing? As mentioned in the Core Competency Curriculum Guidelines⁴⁸ for court managers: “Information Technology clearly can improve justice system and court performance through instant, integrated, and linked information.”⁴⁹ Computers are a much more flexible tool than the paper and pen system. Significant benefits can be realized from the implementation of an electronic filing system. In a survey of judges done by the National Judicial College, results have shown that over two thirds of respondents identified the following benefits to electronic filing: 1) reduction in the volume of paper (78%), 2) better access to information (68%), 3) and improved efficiency of clerks (68%).⁵⁰ A completely electronic system offers tremendous advantages to the courts.

Electronic filing has the potential to enable more efficient and effective communication, storage, retrieval and dissemination of the information involved in court matters. We foresee that this will provide dramatic benefits for courts, tribunals, etc., for counsel, and for individual litigants as well.⁵¹

Below is a summary of those most likely to be important success factors in the eventual implementation of e-filing at the NAFTA Secretariat: 1) paper reduction, 2) increased accessibility, 3) interoperability with the case management system, 4) full text searches, and 5) cost reduction.

⁴⁸ The National Association for Court Management (NACM) Core Competency Guidelines provide a comprehensive statement on the core areas of court management skill and responsibility as well as what court leaders need to know and be able to do. *See Court Manager*, Vol. 18, Issue 2, 2003.

⁴⁹ “Information Technology Management”, *Court Manager*, Vol. 18, Issue 2, 2003, p. 59.

⁵⁰ “Judicial Survey: Electronic Filing in U.S. State Trial Courts”, The National Judicial College, p. 9.

⁵¹ Gary Pinder, “Opening address to the first E-Filing Project Advisory Committee (EPAC) Electronic Filing Conference”, Ottawa, May 2001.

i) Paper Reduction

One of the primary reasons for embracing an e-filing project is to reduce the paper burden.

- Paper files are not only cumbersome, but are only available to one person at a time;
- They must be delivered by mail, courier or hand;
- They require constant maintenance and significant storage space; and,
- Paper files lead to duplication.

However, it is debatable whether e-filing will genuinely cut down on the amount of paper being stored because of the natural tendency of individuals to prefer handling paper rather than reading from a computer screen. Still today, paper remains the medium of choice for many court users even if more people produce documents and communicate electronically.⁵² One thing is certain, in order to increase the benefits possible from e-filing, it is imperative that electronic documents eventually become the official record. It does not make sense to accept electronic files if we do not intend to use them electronically. "... when the official court record is electronic, most of the problems caused by having paper 'official' records are ameliorated or eliminated".⁵³ Courts gain in both security and flexibility when electronic records become the official court record. "Duplicate copies of electronic documents can be easily and inexpensively maintained for security."⁵⁴ There is also an increase in security of court records arising from more reliable electronic backup copies.

Additionally, reducing the necessity for the handling of paper documents will lessen the workload of court personnel and increase the protection of documents from loss or destruction. The reduction in paper will automatically reduce the storage space

⁵² Court Manager, *Supra* note 49, p. 59.

⁵³ Roger Winters, "Future Trends in State Courts, Time for Electronic Court Records", National Center for State Courts, 2004.

⁵⁴ Standards, *Supra* note 17, p. 13.

required, something that is becoming difficult to manage in many jurisdictions, including the NAFTA Secretariat. The cost of storage on computer disk and hard drives has gone down considerably in the last few years and is definitely less expensive than floor space, at premium rates, in court houses or office buildings. “A great deal of space is needed to store all that paper, whereas a CD-ROM capable of holding 180,000 pages of text takes up very little space.”⁵⁵

Technology can also provide a true cost saving for court systems in storing electronic records rather than paper records. One national study done in 1999 by the United States Department of Justice indicated that approximately fifty percent of a court’s operating expenses could be attributed to the handling and storage of paper documents.⁵⁶

Less paper means less courier, less reproduction, etc. and therefore, elimination of most costs associated with the physical handling and storage of paper. Electronic format allows simple and quick transfer of case files.

ii) Accessibility

Another main benefit resulting from the implementation of an electronic filing system is the increased accessibility. Computers allow many individuals to view the same information simultaneously and have the potential for improving and speeding up access to that information. Judges/panel members, court staff, lawyers, and the public will greatly benefit by having instant access to file information, including filings, and “print on demand” by the simple click of the mouse. The information being presented is the same as that which is contained in the paper document, but it becomes more readily accessible. Electronic filing does more than replace

⁵⁵ Poulin, *Supra* note 26, p. 17.

⁵⁶ Gregory M. Silverman, *Rise of the Machines: Justice Information Systems and the Question of Public Access to Court Records Over the Internet*, 79 *Washington Law Review* 175, 2004, p. 179 quoted by Lynn Eicher Sudbeck, “Placing Court Records Online: Balancing Judicial Accountability with Public Trust and Confidence”, May 2005, p. 68.

paper files; it is faster, less expensive, and more convenient to the vast majority of users. The front-end application to the e-filing system will facilitate access for litigants by providing a common interface and single registration to filings of documents, regardless of the Section of the Secretariat, thereby potentially streamlining the entire process: “Electronic text and data are available sooner, usually are more complete, and often are more accurate.”⁵⁷

Extending electronic filing deadlines through a 24/7 connectivity to the filing office and court record will further promote e-filing by increasing access for all parties interested:

The best news for lawyers may be extra filing time. In the paper world, lawyers who were down to the wire on deadlines had to race to the clerk’s office before 5 p.m. for a date-stamp.⁵⁸

It also reduces the need to assist with public access to files.

iii) Interoperability

Benefits will be somewhat limited unless there is an information or case management system that integrates with the e-filing system. Interoperability between these systems means that documents submitted electronically can automatically provide data to the case management system, eliminating most of the redundant data entry by court personnel. This redundancy is a source of potential error, and eliminating it would enhance accuracy and efficiency in record maintenance.

iv) Full Text Search

Electronic filing allows providing new services not offered before. The one most appealing to eventual users is that case pleadings can become fully searchable and readily accessible when in electronic format. For panel members, the project represents an environment

⁵⁷ McMillan, Walker, and Webster, *Supra* note 4, p. 123.

⁵⁸ Michael Dayton, “Supreme Court Launches Electronic Filing of Documents” quoted by Christie Speir Cameron, “Electronic Filing in the Supreme Court of North Carolina”, July 2001, p. 9.

that will provide sophisticated access, including full-text search functions within a single document or across an entire case or file system at any time, from anywhere.

v) Cost Reduction

Aside from the elimination of most costs associated with the handling and storage of paper identified previously, electronic filing would considerably reduce the expenses incurred with the geographical dispersion of the three national sections of the NAFTA Secretariat. These sections must share case documents among themselves, with panel members, and also with participants to a case that are located all over North America. The electronic filing system would facilitate the exchange of this information while reducing costs.

vi) Other Benefits

Law firms should see significant gains in productivity, and their litigation costs should be considerably reduced. E-filing reduces the need for the filing of duplicates and the binding of multiple copies of court pleadings, it gives a greater control over the delivery of filings, and provides a replacement medium for their archival storage. Attorneys will no longer have to make trips to the courthouse to file pleadings; they will be less dependent on courier service and the mail; notices to other parties will be immediate; and pleadings could be filed at all hours of the day.⁵⁹

Lawyers spend an average of \$90 per filing on preparing and copying documents for distribution, delivery via couriers or other paper-based system, and related overhead costs. In contrast, that expense when filing and doing service electronically, the average goes down to about \$10.⁶⁰

⁵⁹ Finn, *Supra* note 15.

⁶⁰ “Benefits of eFiling and eService: Saves \$\$\$\$”, News and Information about Electronic Filing and Electronic Service from Courts in the United States and around the World (<http://contentcentricblog.typepad.com/ecourts/>), May 20, 2005.

The greater benefits may turn out to be those experienced by the courts and the public. “In theory, e-filing should save time and money for all concerned while enhancing the amount and quality of information that can be quickly searched or accessed.”⁶¹ In summary, through the use of technology, electronic filing increases office efficiency by modernizing traditional ways of doing routine tasks associated with case documents. It allows for better and easier dissemination of case information and facilitates access to the court record for all those concerned. It reduces paper handling and all the inconveniences associated to it while increasing security. E-filing consequently enhances the support and services offered to panel members, practitioners, and the public.

e) Challenges

It is important to identify challenges to an electronic filing system from the start. It is far easier to plan for and deal with issues and concerns when you are aware of them. E-filing in the courts involves many complex issues. The most often cited problem areas are public access, copyright, security, rules of procedures, and the redistribution of costs.⁶² Based on the literature review, the following section describes some of the common challenges to the implementation and ongoing uses of any e-filing system: 1) security, 2) transparency and openness v. privacy, 3) education of users, 4) time and costs, and 5) system failure.

One of the challenges to be addressed with electronic filing is the security of information and the protection against data that could be incorrectly compiled or altered by unauthorized persons, either before, during, or after it is reported. This can be addressed by implementing adequate controls over the e-filing systems (i.e. firewall, password, anti-virus, etc.). A wide variety of safety measures have evolved rapidly to address many concerns and although still a

⁶¹ Middlemiss, *Supra* note 16, p. 227.

⁶² Feasibility Report, *Supra* note 29, p. 9.

major factor, security-related matters can and are resolved very effectively nowadays. For example, digital signature, encryption, and public key infrastructure (PKI) have progressed and offer, although expensive, valid solutions in terms of authentication and system security for courts considering any type of e-filing system. For more details concerning security issues related to the feasibility of an e-filing system, please see the technological issues section discussed under the “Feasibility” heading (Section VII (c) (iv)).

“Protection of the transparency and openness of the justice system is another major issue, especially where it ties in with the need for access to the electronic information that results from the filing.”⁶³ There is a general concern that creating an electronic document repository will shift the delicate balance between the principle that courts must be seen to be open and accessible and the privacy concerns of participants.⁶⁴ “Creating an integrated searchable database on the web opens the doors to many more members of the public accessing information than has traditionally been the case.”⁶⁵ While all documents (except those identified as “Business Proprietary”) filed are in the public domain, it is generally recognized that certain protections of privacy, inherent in the burden of searching through hardcopy filings, do not exist in the electronic world.⁶⁶ Any attempts by a court to restrict access to information on the grounds of privacy could be met with resistance by groups supportive of open courts.

There is also the challenge of educating users on the benefits of using electronic formats in order to reduce paper usage. Communication plays a major role when any new idea or way of doing things is introduced. Participants to electronic filing systems need to be convinced of its benefits and educated on its functionalities.

⁶³ Poulin, *Supra* note 26, p. 68.

⁶⁴ Middlemiss, *Supra* note 16, p. 196.

⁶⁵ *Ibid.*, p. 157.

⁶⁶ William Murray and Gary Pinder, “Discussion Paper: E-filing Service Provider Model”, *Lex Electronica*, February 2002, p. 14.

Other challenges include cost and time factors. Courts are finding that the integration of electronic documents with the CMS is extremely complex and time consuming. The extended time frames required to properly implement e-filing raise the costs and the courts are faced with the conundrum of a more expensive solution to the problem than the cost of the problem itself.⁶⁷

The last common issue has to do with the system itself. Consideration has to be given to the eventuality that the Internet or the servers suddenly become unavailable, either at the court or at the law firm, and therefore, alternative solutions have to be factored in to the implementation plan. In the electronic filing world, having services down is like having the doors to the court closed. This inconvenience can be easily avoided with backup provisions for times where the e-filing system is inoperative. Options like dialup or fax represent possible acceptable temporary solutions that must be prescribed for by new rules of procedure.

To summarize, the advantages of electronically filing and accessing court information appear to outweigh the disadvantages. There are attainable strategies for mitigating the key risks as they relate to electronic filing, the most important of which is to carefully plan and assign the undertaking of the project to a very capable project manager and competent team.

⁶⁷ “Benefits of eFiling and eService: Saves \$\$\$\$\$”, News and Information about Electronic Filing and Electronic Service from Courts in the United States and around the World (<http://contentcentricblog.typepad.com/ecourts/>), May 19, 2005.

VI. EXPECTATIONS AND READINESS OF STAKEHOLDERS

It seems evident that given the potential benefits and challenges inherent to electronic filing, the NAFTA Secretariat should move forward with the implementation. But, before making any decision it is important to assess stakeholders' expectations and readiness.

Electronic filing denotes a significant departure from current filing methods. It represents not merely automation of the existing ways of filing but a change in the ways things are done. For this reason, and to move away from the traditional court approach, it is essential to learn about the expectations and apprehensions of those who will take advantage of and be most concerned by the implementation of such a system, the stakeholders. The other issue is to evaluate the readiness of potential key users of the system.

E-Filing is consistent with government wide initiatives in Canada (*Government On-Line*)⁶⁸ and the United States (*E-Gov*)⁶⁹ to use information and communication technology to provide citizens with enhanced access to improved and simplified services. As previously described in the "Background", Section III, the NAFTA Secretariat has initiated improvements in recent years that have set the table for the eventual electronic filing of pleadings and for allowing access to panel review information. The infrastructure and systems are already in place and favorable to implementation. The digitization (i.e. scanning) of case documents is in progress and, as will be explained later in the "Feasibility Issues" (Section VII), is an important aspect of any e-filing development.

Another element is that projects covering an entire jurisdiction seem to be better received by filers than partial implementation. It will therefore be crucial that all three national sections support and participate in the initiative. The three sections of the NAFTA Secretariat have

⁶⁸ http://www.gol-ged.gc.ca/index_e.asp (accessed on October 28, 2005).

⁶⁹ <http://www.whitehouse.gov/omb/egov/index.html> (accessed on October 28, 2005).

administrative independence. They are separately funded by their respective national governments and report on spending, performance and other administrative decisions to their funding authority. But that independence should not prevent them from joining forces when general strategies can be developed to improve the administration of disputes and enhance services. Of all those involved in the process, the three national Secretaries might be the toughest to convince of the advantages electronic filing has to offer. It represents a significant change to how they operate, it may signify job redefinition, it may be perceived to reduce control over filing procedures and documents, and it may be seen to reduce operating costs but increase technology expenses.

The approach followed for the administration of surveys to assess the expectations and readiness of stakeholders in regards to the potential implementation of an electronic filing system was described earlier in the “Methodology” section. Two separate groups of stakeholders in Canada and the United States were surveyed: 1) panel members and 2) counsel. For editorial purposes, the terms “participants” and “respondents” are used interchangeably to denote survey participants.

The following paragraphs describe the essential survey results obtained. For the detailed results, please see Appendix D (page 91).

a) Expectations

i) Attributes

The survey was aimed at identifying stakeholders’ expectations and defining the attributes of an electronic filing system from a client’s perspective.

Participants were first asked to rank a series of potential benefits of an electronic filing system. Lawyers and panelists did not have identical lists, although some statements were

similar. For counsel, the feature identified as offering the most benefit was the ability to perform full text searches within individual documents and across and entire filing system (89%), followed closely by the ability to access electronic records of documents in a panel review where they have a direct involvement (84%). It is worth noting that this last statement was identified by the highest number of respondents as potentially the “greatest benefit” (42%). Following is the exhaustive list of potential benefits evaluated by counsel:

Table 3: Potential Benefits for Counsel

<u>Potential Benefits</u>	<u>%</u>
The ability to perform full text searches within individual documents and across and entire file system	89
The ability to access an electronic record of documents in panel reviews where they have direct involvement	84
The ability to electronically serve parties in a proceeding	79
The reduced need for filing of duplicate paper copies by counsel	74
The ability to initiate proceedings and file documents electronically	68
The ability to access an electronic record of panel reviews in general, whether or not they are involved in them	63
A single point of access for all filings, regardless of the Section of the NAFTA Secretariat	58
The ability to file documents electronically, twenty-four hours a day, seven days per week	58
The ability to receive Email confirmations for all documentation filed or served	37
Increased public access to panel review files, including remote access	32
The availability of phone support to resolve technical difficulties	32

In the case of panel members, as you can tell from the list below, the statement identified as offering the most benefit seems to be the one crucial factor as other statements didn't merely get the same support from respondents.

Table 4: Potential Benefits for Panel Members

<u>Potential Benefits</u>	<u>%</u>
The ability to access an electronic record of documents in panel reviews where they have direct involvement	86
The ability to perform full text searches within individual documents and across and entire file system	59
The ability for the Secretariat to electronically serve parties in a proceeding	55
The ability to access an electronic record of documents in panel reviews in general, whether or not they are involved in them	48
A single point of access for all filings, regardless of the Section of the NAFTA Secretariat	45
The ability to increase public access to panel review files, including remote access	38
The availability of phone support to resolve technical difficulties	31

It will be important to take these results into consideration when time comes to design the electronic filing system and to define the features the application should offer to stakeholders as these elements will have a significant influence on the probability of adoption by eventual users.

The next question related to who would benefit most from an e-filing initiative for NAFTA proceedings. It is worth noting that the results from both counsel and panel members identified the beneficiaries in the same order. Those who could benefit the most are attorneys/counsel (83%), followed by panelists and court staff (71%), governments' party to the Agreement (58%), and the public (25%). Even though the public is ranked as the group to least benefit operationally from electronic filing, one would hope that the initiative would increase transparency of the NAFTA process and, in turn, enhance public trust and confidence in it.

This confirms the view that: “Given today’s concerns over transparency and the public’s right to access information, the time to consider electronic filing is ripe.”⁷⁰

ii) Apprehensions

Participants were asked to express their level of agreement with statements regarding apprehensions about an e-filing system. The statement that raised the highest level of concern was that documents sent or received electronically were less secure than documents sent or received by courier or by hand delivery (58% of lawyers and 48% of panelists agreed with the statement).

Proprietary documents will be the key to establishing a worthy electronic filing system. The system must allow easy access to proprietary documents for those who have proper clearance while keeping them secure from everybody else. Selling this idea will require convincing the stakeholders that this system can balance these competing concerns.⁷¹

Another less important issue of concern gathered from the returned surveys but worth mentioning is that with the implementation of e-filing, substantial training will be required by lawyers and their staff to use the system.

Respondents were also asked to choose the more favorable of two options for the handling of proprietary documents. The results obtained were even (50/50) between the options of filing everything electronically using a secure system, and filing only public documents electronically while submitting confidential ones in hard copy. Unless case participants can be convinced that only authorized individuals will have access to confidential versions of submissions, and that governments and investigating authorities can be assured that all electronic copies are destroyed upon completion of a panel review, the only way to a viable approach will be to maintain the paper filing of confidential documents.

⁷⁰ Comment taken from the returned electronic survey to panel members.

⁷¹ Ibid.

Attorneys surveyed were also asked about their level of objection to certain features that might be part of an electronic filing system. 100% of the respondents would have no objection with public documents they file being made available to other counsel, and 95% were in favor of making them available to the public. Further, 84% agreed with having all documents filed in one standard format. The main objection was in regards to the statement that all documents would have to be submitted in hard copy as well as in electronic format. Only 11% of respondents had no objection to submitting their filings in both formats. The effect of requiring litigants to file backup hard copies would discourage the use of e-filing technology among the parties.

b) Readiness

The surveys were also designed to assess the level of readiness of the different NAFTA Secretariat stakeholders. Individuals surveyed were asked about their familiarity with electronic filing. 75% of all respondents said they were familiar with e-filing, and three quarters of those said they had previously used e-filing with another court or tribunal. The most revealing number arose from U.S. lawyers, where every single individual who returned the survey said he or she had used e-filing before. This is not surprising when you consider that the U.S. has more projects and that they are way ahead with the implementation of electronic filing. Comments from those who had previously used an e-filing system included:

- “It permitted rapid filing and copying documents to other parties with great efficiency. Much time was saved.”
- “Electronic filing eliminates a significant amount of work.”
- “Easy to use, timely and efficient.”
- “Very beneficial.”

For additional comments from survey respondents, please see Appendix F (page 100).

In the assessment of the readiness of stakeholders, the next two questions applied only to attorneys and their eventual use of the application to file documents. Counsel were asked how likely it was that they would use electronic filing if the NAFTA Secretariat was to implement it in the next year, three years, and five years or more. The vast majority (79%) said they would utilize the system if it was implemented in the next twelve months, and this number increased to 84% if it was done in the next three or five years.

Under the same consideration of using the application to file documents, different file formats were identified and respondents were asked which one was preferable for filing. 84% identified PDF as the preferred format and a few choose Microsoft Word.

The filings should be in PDF to avoid being able to reverse the changes and uncover opponents work product. However, such a form would significantly reduce the benefits of an electronic database with respect to full text searches.⁷²

The next survey question was only addressed to panel members, and questioned how they would handle documents forwarded to them electronically (this question could probably have been asked to lawyers as well, but the purpose was to identify how panel members across North America would deal with receiving pleadings from the NAFTA Secretariat in electronic format). Close to 73% said they would access them electronically and print those they needed, while 6 out of 29 (21%) respondents indicated that they would still request hard copies of the complete record be sent to them. It is interesting to note that the survey results indicated that it is quite improbable that any of the panelists would only work with the electronic versions and not print a single document. One concern that was raised by some respondents was the fact that it was transferring the printing burden and cost to panel members instead of the Secretariat.

As a panel member, I do not want the responsibility/cost of printing the large, often over-extensive, filings made by the parties in the case.⁷³

⁷² Comment taken from the returned electronic survey to counsel.

⁷³ Comment, *Supra* note 70.

The education aspect will play a key role in alleviating this apprehension. It will be important to offer training, especially to panel members, on using the system and the advantages of working with the electronic version rather than constantly reverting to printing. Since one of the major objectives of an electronic filing system is to maintain and provide documents to all users in electronic form, converting documents back to paper for viewing purposes would result in unnecessarily increasing the costs of operations.

The survey results, including additional comments made by respondents, showed that there is strong support among stakeholders for e-filing, and that lawyers and panel members seem very open, in large part, to the NAFTA Secretariat's implementation of an e-filing system in the not too distant future. One number previously mentioned is particularly revealing: over 79% would start using the system if it was implemented in the next twelve months. The transition to e-filing cannot be put-off indefinitely. As mentioned by one respondent: "Do it".

c) Other Issues

The last two questions of the survey were asked to both counsel and panel members. The first question dealt with concerns of legal limitations to the NAFTA Secretariat disseminating electronic public documents through the Internet. Only 13% had apprehensions about the dissemination of information and most of their concerns were related to confidential documents and ensuring proper mechanisms to protect them existed. This result is consistent with the confidentiality concern identified earlier in the survey and the willingness of counsel to provide public access to the documents they file in a proceeding.

The last survey question involved the NAFTA Secretariat itself and asked if the implementation of electronic filing would enhance its image. 85% of respondents answered that it would improve it, with a higher percentage of believers originating from the U.S.

The survey results duly reflect the tendencies confirmed in the literature consulted. Two prominent elements to the successful implementation of e-filing became apparent from the answers to the surveys. First, the legal community involved in NAFTA dispute settlement proceedings is clearly ready to consider using an electronic filing system, and even more so if it provides access to case information and search functionalities. Second, without diminishing the importance of all other apprehensions, one will obviously be a key factor in the success of electronic filing: security of confidential documents. This issue will be the selling point for all stakeholders, including NAFTA Secretariat administrators. It will require careful consideration on the part of the steering committee and the project team.

Again, for complete survey results, please see Appendix D (page 91).

In essence, the e-filing system must be customer oriented in order to capture the initial interest of the stakeholders. It is important to involve them in the design process to ensure their needs and concerns are addressed. Adopting a client-driven approach is the key to service transformation.

VII. FEASIBILITY ISSUES

The e-filing process is almost always introduced as an optional alternative to filing paper documents, i.e. to reduce reliance on paper as the main medium for conducting proceedings. The ultimate objective of implementing electronic filing is to have all court records maintained electronically. In most courts, a requirement of mandatory participation will follow a period of voluntary involvement during which the viability of the e-filing process will become apparent. In order to successfully implement e-filing for NAFTA panel reviews, certain legal and operational issues have to be considered. This paper does not pretend to cover all issues but attempts to identify the major considerations. It is important to keep in mind that lawyers will use an electronic filing system only if it provides robust functionalities.

At the outset of such a project, it is essential to identify the needs that make an electronic filing system worth implementing. Examples of problem areas are inadequate storage space, damaged records, redundant work and workflow problems, security, etc. It is also important to set goals and objectives to address those matters i.e. enhancing customer service, improving public access time to court records, increasing availability of filing, creating an electronic case file, filing all papers electronically, enhancing archiving methods and security, etc. Once both the needs and the objectives have been defined, commitment has to be obtained from court leaders, those who will give the go-ahead for the project and allocate the necessary resources to it, by presenting them with a business case.

The literature disclosed that three of the biggest impediments to the implementation of electronic filing are budget restrictions, staffing requirements, and technology limitations. These factors will have an impact on some of the selected alternatives and features of the system, and should be kept in mind throughout the implementation process.

This section of the paper describes factors to take into consideration for the feasibility of e-filing. It also serves to identify key elements, which could facilitate the decision-making process involved in a project of this magnitude. Issues to be discussed include the following:

Table 5: Feasibility Issues

<u>Elements</u>	<u>Description of Issues</u>
Planning	<ul style="list-style-type: none"> • Create steering committee and project team • Evaluate needs • Analyze systems • Review options and identify model • Determine pilot project • Develop training and communication strategy
Design	<ul style="list-style-type: none"> • Ensure interoperability of systems • Define data filing standards • Define technical and operational standards • Develop electronic procedural forms • Determine filing notification process
Technological	<ul style="list-style-type: none"> • Assess computing environment • Identify communication medium • Determine electronic document format for filings • Program front-end application to allow data capture • Determine system security • Establish backup plans and procedures • Ensure electronic record remains in the possession of the court
Rules of procedure	<ul style="list-style-type: none"> • Obtain authority to accept and preserve electronic documents • Determine rules to be modified • Draft new e-filing rules
Implementation	<ul style="list-style-type: none"> • Define implementation phases and user groups access • Obtain participation of all involved • Ensure fair access to all

<u>Elements</u>	<u>Description of Issues</u>
Financial	<ul style="list-style-type: none"> • Obtain sufficient funding for: <ul style="list-style-type: none"> - Development - Implementation - Training - Support
Challenges	<ul style="list-style-type: none"> • Takes time to amend rules (i.e. official record status) • Address special needs specific to the organization: <ul style="list-style-type: none"> - for NAFTA proceedings this include finding a solution for administrative records, appendices and confidential documents

a) Planning

A planning phase is mandatory to lay out everything. The process is slow, but plans must be made and a vision developed to guide the project team through this demanding endeavor. During the planning stage, there is an evaluation of the previously identified needs, an analysis of the current systems, and a review of the different options.

In order to properly implement electronic filing, a steering committee composed of representatives from all organizations concerned should be created to oversee the project. It should be comprised of government representatives from each of the three NAFTA countries, NAFTA Secretariat Secretaries, panel members, lawyers, those who deal the most with NAFTA disputes,⁷⁴ and an information technology manager. This committee would review and approve all work done by the project team whether it is the selection of the system, proposed rule changes, additional resources, etc. They should also allocate funding to the project team. The steering committee would be responsible for establishing a process for creating, modifying,

⁷⁴ The same individuals could potentially represent panel members and lawyers, as some have been appointed on panels as well as been counsel for participants in other panel reviews. This might reduce the number of committee members and reduce the cost associated with it at the same time. Keep in mind that a committee of this nature should not end up being too numerous as this would render the decision making process more difficult.

approving, and disseminating policies and procedures. Another group, the project team, responsible for the daily management of the implementation plan, should be formed and comprised mainly of staff members from the three NAFTA Secretariat sections. It should also be headed by a senior staff member, who in turn would report to the steering committee.

The planning also consists in identifying models. Courts that implement electronic filing must choose between two different e-filing approaches. A single provider model, where documents are submitted through a single e-filing system; or the alternative approach, which allows multiple e-filing systems to send documents to the court using software that acts like a “black box” between the private service providers and the court. LexisNexis believes that the single provider model is the best choice because they view the multiple systems model as less functional, more complex, and more expensive.⁷⁵ With the single system model, courts would be faced with a choice between the development of their own system and private vendors. If a third party approach is selected, arrangements must be made with private vendors for ensuring continuous service of electronic case file systems or components, even if there is a change in vendor. “Because courts [tribunals] are a small market for software designers, finding vendors whose court products are world-class and whose financial base is strong enough to maintain the software’s currency and functionality is problematic.”⁷⁶ The way to protect courts from this reality is through open standards, which means that the technical specifications of the application are published so that other companies can develop and support compatible products. Using open standards preserves the technological independence of institutions who can turn to other partners and service providers as the need arises. It is the most important technical element of strategic planning for electronic filing; however, commitments to “proprietary” technology are

⁷⁵ “Launching a Successful E-filing Initiatives”, LexisNexis *File & Serve*, 2005, p. 1.

⁷⁶ Court Manager, *Supra* note 49, p. 60.

occasionally unavoidable. A stand-alone system would likely suffice and turning to multiple service providers is probably not the best option considering that the three NAFTA Secretariat sections are already sharing information through a common document management system. To maximize the potential of e-filing, a single provider (system) model should be implemented and have the flexibility to adapt to evolving standards.

Before moving forward with implementation, plans should be made for a pilot project. One panel review should be targeted as being a test case. Care should be exercised so as to select the type of case that will most likely provide the appropriate testing of the procedures and the system. It should be a case that will involve parties, especially an investigating authority and section of the Secretariat, who will have previously accepted to participate in the pilot. Ensuring participation of law firms that would be willing to be part of the pilot is also crucial to obtain constructive feedback.

The idea of electronic filing will need to be sold to many, and training will have to be provided to those who will be using the system, as well as technical staff who will be dealing with new hardware, system software, and court operations. The best system will be useless if people are not doing their jobs correctly and therefore, training becomes essential.

As well, "... a major communication strategy should be put in place to manage stakeholder expectations and perceptions."⁷⁷ Conceptualization of information sessions and/or packages, procedural manuals, training sessions, and phone support will all have to be planned for and developed. These efforts will contribute considerably to alleviating customer apprehensions before and during the project's implementation.

⁷⁷ Dr. Elspeth Murray, "E-filing Service Provider Model Feasibility Study-Final Report", Feasibility Report: Electronic Filing Service Provider Model, September 2002, p. 148.

b) Design

The design element is indispensable to the project as it consists of describing the vision of how courts and lawyers will operate in the electronic filing world.

The importance of making the electronic filing system interoperable⁷⁸ with the document management system (DMS) is essential to capitalize on the full benefits of an e-filing system. Stand-alone e-filing systems – not integrated with the DMS – are a possibility in specialized courts like the NAFTA Secretariat, but all the advantages of automatic docketing are lost as documents are stored in a database separate from docketing and case information. Generally, incentives of e-filing systems include the ability to capture docketing information when filing takes place, to effect notice and service on the parties, and to confirm receipt of documents by the court. Considering the geographic location of the NAFTA Secretariat national sections and the parties to proceedings, electronic notice and service of documents is a significant factor in order to take full advantage of the savings such a system would render possible by eliminating costs associated with courier services. 79% of lawyers surveyed said this feature would represent a significant benefit (see Appendix D, page 91). The current DMS used by the NAFTA Secretariat stores its data on a SQL server and provides that information to users through query transactions from an Internet page. The infrastructure, therefore, is already in place to pave the way for sharing the information captured by the e-filing system with the DMS and vice-versa. The major difficulty and the key factor in making this setup productive remains the programming of the interface between both components.

One particular advancement in technology has been the development of Extensible Markup Language (XML), a universal Internet data exchange language. Basically, XML is all

⁷⁸ Interoperability is defined as the ability of heterogeneous computer systems to work together and provide reciprocal access to their systems.

about giving meaning to data through the use of tags (“data about data”).⁷⁹ It facilitates the transmission of data (i.e. case number, type of document, date, counsel, name of participant, etc.) from any application, database, or operating system, to any other application, database, or operating system. One computer can generate the data in XML format and the other can convert the XML data into the input format and data structure required for its application.

The Electronic Court Filing 1.1 Proposed Standard has been developed to serve that purpose. It is intended to define all data required for electronic filing applications. The standard deals only with the data to be exchanged and not with electronic filing themselves. It will not define or constrain any court’s electronic filing system, or define how it should operate. It defines the data to be sent with the document to enable a court to identify the document and its sender and to create the docket entry in the court’s case management information system (CMIS) for the filed document.⁸⁰

In this regard, LegalXML is well advanced, has a large constituency behind it, is evolving, and it can provide for many stakeholder needs.

These data filing standards are acutely significant, but any organization serious about the implementation of electronic filing should also examine the Standards for Electronic Filing Processes (Technical and Business Approaches).⁸¹ Those that are relevant to the way cases are administered in their jurisdiction should be retained and adapted in order to produce their own set of standards. These standards should be consulted and reviewed, and guide all implementation efforts. In the NAFTA context,⁸² the most obvious standards (to list only a few) that would require special attention are:

1 – Courts, lawyers and parties cannot rely on electronic documents unless they are accorded official status. Ensure the Rules of Procedure are amended to recognize and accept electronic documents for two purposes: filing and archiving.

⁷⁹ EPAC, *Supra* note 25.

⁸⁰ Knowledge and Information Services, National Center for State Courts’ Website, <http://www.ncsconline.org/WC/FAQs/ElFileFAQ.htm> (accessed on June 29, 2005).

⁸¹ Standards, *Supra* note 17.

⁸² In the eventuality that the electronic filing project for NAFTA disputes moves forward, a methodical review of the standards should be undertaken to identify all standards to be adopted and respected.

2 – Document format: require electronic documents to be submitted in a format that can be rendered with high fidelity to originals. PDF and TIFF presently provide this functionality. PDF, supported by Adobe Acrobat, is the de facto standard for electronic filing today⁸³ and survey results revealed that 84% of counsel who responded preferred PDF format to file their documents.

3 – Courts will require filers to transmit data identifying a submitted document. This data will ensure better quality of information in the database since the person who enters it, the filer, is the one with the greatest familiarity with the data.

4 – Assign a unique user login and password to each individual filer. Most courts have adopted rules defining the use of a password and user ID as equivalent to signing a document and guaranteeing authenticity.

5 – Addressing the special needs of users. The most evident ones for NAFTA disputes are the trilingual aspect of the operational environment, and the geographic location of stakeholders. Other criteria such as printing capability, electronic service, search tools, etc. also have to be factored in.

6 – Integration with case management and document management systems to facilitate access to electronic court documents (i.e. the NRIS). The document management system is an important component of electronic filing and compatibility between systems is crucial.

Other design issues to be considered include the following:

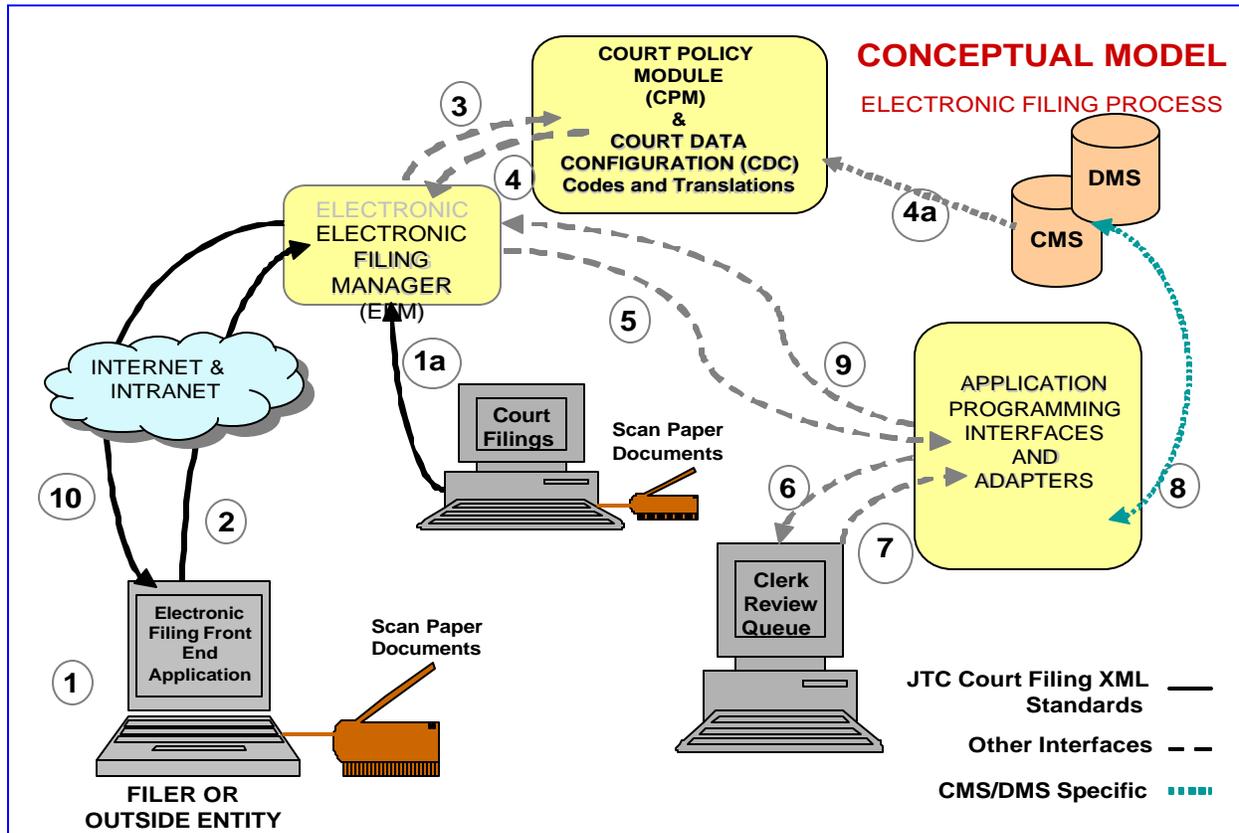
- The requirement for imaging technology to process documents that will continue to be submitted in paper format.
- The development of electronic procedural forms.
- The electronic acceptance of case initiation documents.
- The format of the notification to filers of their submission being accepted by the system.

It is mandatory to have an imaging technology provision sub-function for e-filing to be fully beneficial. This prerequisite will allow importing paper filings that cannot be captured electronically at the source, as well as documents initiated by court personnel and panel members, into the electronic court record. It is also recommended that all e-filing systems have the ability to produce a paper record on demand. Electronic court records should be at least as easy and inexpensive to access as paper records.

⁸³ Standards, *Supra* note 17, p. 18.

The following conceptual model illustrates how each component relates with others.

Figure 1: Sample Conceptual Model of Electronic Filing Process⁸⁴



Another part of the design process is the development of electronic procedural forms for mandatory standard filings such as complaints and notices of appearance to be filled online and submitted. Developing and providing procedural forms and templates to users should be the initial phase in any electronic system implementation. It creates uniformity in the filings. Will the Secretariat want to develop electronic versions of the forms already provided in the Rules of Procedure to be used by counsel when filing certain type of documents?

⁸⁴ Standards, *Supra* note 17, p. 58.

There are several advantages to courts providing this guidance:

1. The courts control the organization of the information.
2. The courts control the “look” of the document.
3. The courts can mark data fields within the documents that can assist in data entry.⁸⁵

Adobe Acrobat now allows for the creation of PDF forms that can be filled out online and then saved, printed, or better yet, e-filed.

Consideration also has to be given to whether or not documents may be filed electronically for case initiation (68% of respondents said the ability to initiate proceedings offered a significant benefit). Basically, the dilemma is whether or not a request for panel review can be electronically filed. Due to the fact that the official notification (i.e. service) of this document to other parties in a case is the duty of the responsible Section of the Secretariat, there is no inconvenience in allowing e-filing of this document. It should be noted that some jurisdictions have preferred not to include case initiating documents in their e-filing process.

The design of the system should also describe how filers would be notified that their digital document has been successfully accepted by the system. Many alternatives are possible such as e-mail notification, fax or phone, or even an agreement by counsel to check the system periodically. A clerk’s review of electronic filings is an essential part of quality assurance prior to data submitted by filers being transmitted to the court’s database. Once an employee has performed the verification, courts could follow the CM/ECF model:

When a document is filed in CM/ECF, a *Notice of Electronic Filing* (NEF) is automatically generated and e-mailed to the registered parties in the case. The NEF includes the text of the docket entry, the unique electronic document stamp, a list of the case participants receiving e-mail notification of the filing, and hyperlink to the document(s) filed.⁸⁶

⁸⁵ McMillan, Walker, and Webster, *Supra* note 4, p. 137.

⁸⁶ “CM/ECF Frequently Asked Questions”, Case Management/Electronic Case Files Website, http://www.uscourts.gov/cmecf/cmecf_faqs.html (accessed on August 5, 2005).

c) Technological Issues

Courts have always provided services but with the adoption of electronic filing, a technology service would also have to be delivered. Sending electronic documents to a court, automatically serving parties, accessing docket information and a repository of documents, storing files, and providing public access are all possible with current technology. Electronic filing combines existing and new technologies to bring efficiency to many court procedures, and at the same time, lower operational costs. With one click of the mouse, users can move through data and information that was formerly dispersed in fragmented and often poorly designed electronic systems, libraries, and paper records.

When thinking about technology, which is probably the most important factor in an e-filing initiative, many things must be considered: the computing environment, networks, Internet connectivity, communications, integration with case management system (CMS) and/or document management system (DMS), hardware and software, file servers, security/firewall, etc. The infrastructure needed for a wired court is substantial. Sufficient bandwidth,⁸⁷ robust servers, and sophisticated web applications are all needed to connect the desktop to the data.

i) Systems Infrastructure

The thing to do is to first assess the current networks, servers, and system capability, and determine the size of the anticipated database of electronic documents in order to guarantee enough capacity within the system for continued database growth and quick access in busy periods. Electronic filing requires the ability of servers to store larger amounts of data, to have faster processing speeds and more processing memory, and to have room for additional users and

⁸⁷ Bandwidth is the capacity of a circuit or other medium to carry information. "The amount of data that can be transmitted over a network." Peter Norton, Introduction to Computers (Third Edition), Glencoe/McGraw-Hill, New York, New York, 1999, p. 503.

applications (i.e. scalability⁸⁸). It is also critical to ensure that servers will always be available to users and to establish adequate backup plans and procedures to guarantee the integrity of the system and the court records. All e-filing systems should include a fax modem dial-up phone line connection (set to receive only) to receive documents when servers are down.

ii) Communication Medium

The next issue is to choose an electronic communications medium for use by the court and its customers. The NAFTA Secretariat should decide on the medium that will allow quick access to all electronic documents.

When we think of electronic service delivery, we immediately think of the Internet as the communications infrastructure. ... an organization planning to provide access to and deliver services electronically, need only create a web interface to their current operations, and they are in business.⁸⁹

With the arrival of the Internet, a universal server/terminal was created. It has become the model for any new software applications and it provides an opportunity to facilitate the relationship between courts and litigants.

QuickLaw has large penetration among legal firms and indicates 90% of lawyers access the service via the Internet, suggesting Internet access penetration is high in the legal profession.⁹⁰

Electronic filing over the Internet is destined to become commonplace as more courts seek to reduce costs and make documents more available. It is a vehicle for the dissemination of information and to provide public access to documents. One way to provide better access:

... is to utilize the recent advances in technology, and specifically, the Internet, for publishing information about the state court system and its services online as well as allowing access to public court record information.⁹¹

⁸⁸ Scalability is known as the degree to which a computer application or component can be expanded in size, volume, or number of users, and continue to function properly.

⁸⁹ Murray and Pinder, *Supra* note 66, p. 10.

⁹⁰ Middlemiss, *Supra* note 16, p. 169.

⁹¹ Sudbeck, *Supra* note 47, p. 1.

Taking into consideration the existing structure of systems at the NAFTA Secretariat, it appears as though the Internet represents the best means of communications for a future electronic filing system. As mentioned previously in this paper, the three sections of the Secretariat are already using the Internet to share information stored on the DMS. One important feature of the Internet is e-mail, which has been suggested as a possible means for e-filing. Allowing e-filing via e-mail would be limiting the functionalities of the system given that its features are not as complete as those the Internet offers. Through e-mail, one can only attach an electronic file. With a web base approach, a front-end page can be developed that requires filers to fill out some mandatory fields in order to capture essential case and document data that could then automatically update the DMS and facilitate docketing.

iii) Front-End Application

The development of a straight forward front-end would enable electronic filers to submit documents by visiting a homepage on the NAFTA Secretariat website for any of the three sections of the Secretariat. This front-end approach is being used in many jurisdictions, most notably with the CM/ECF system, and represents a practical solution for the NAFTA process. A homepage is designed similar to a cover sheet, containing simple mandatory questions that are necessary to obtain detailed information about the sender, date, case number, parties, and so forth. This allows for the identification and proper placement of the document in the correct file with the correct information. This approach also allows the court, upon receipt, to automatically update the document management system.

Anyone who thinks about electronic filing of court documents for any length of time recognizes that attorneys and courts are constantly re-entering information into various databases housed in the law firm and the courthouse.⁹²

⁹² McMillan, *Supra* note 23.

iv) Security

The concern of many with using the Internet is security and this was confirmed by the survey results. More than half of the participants agreed with the statement that documents sent electronically were less secure than those sent through traditional channels (see Appendix D, question 9, page 96).

The firewall is an essential part of system security, which is another aspect of electronic filing that requires special attention. One way to prevent any problem is to have the electronic filing front-end outside the firewall. The reason for this is “because the court needs to establish a single point of presence wherein Internet security and virus checking can reside.”⁹³ All documents should be originally submitted to that security computer which does not store any permanent data. Secure transmission modes, preservation devices, and a secure website are areas of major importance.

The CM/ECF system has many security features and has passed an evaluation by the U.S. National Security Agency. Access to the system is through a court issued username and password. Such precautions must be taken to preserve the integrity of the system and the information being processed.

Security measures should protect the court’s data from three major sources of harm: intentional misuse or destruction, inadvertent user errors, and loss due to computer failure.⁹⁴

The e-filing system should allow the use of reasonable measures to prevent interception of sensitive information during transmission to and from the court. To address the security concerns, low-cost sophisticated encryption packages have been developed to protect confidentiality, integrity, and authenticity of electronic documents. However, as mentioned

⁹³ McMillan, Walker, and Webster, *Supra* note 4, p. 149.

⁹⁴ Webster, *Supra* note 1, p. 49.

earlier, many courts have simply adopted users' identifications and passwords as means of protecting access to the e-filing system and are currently treating the use of an attorney's unique system login and password as his/her signature. Where more sophisticated security measures have to be taken is in protecting the court's servers/systems, including the DMS and data that reside on them, from unauthorized access and potential harm. "For those Courts moving to electronic filing...it is a much more secure environment than a paper-based fileroom."⁹⁵

v) Custody of Court Records

One common denominator in almost all jurisdictions examining electronic filing is that courts must remain firmly in control of the court record.⁹⁶ Courts have ultimately decided that they wish to hold their own data, and plans should be made to preserve that information on their servers.⁹⁷ This means that whatever approach is selected, whether an in-house system or a private service provider, all data and digital documents must either reside on court servers or any other medium under court control.

vi) Document Format

Another technological aspect that requires special attention is the preferred format of documents, if one is to be imposed by the system, for all electronic filings. Every court has a diversity of requirements and procedures for managing the filing of documents. The primordial issue is to obtain the legal authority to accept and preserve digital documents. Paper will no longer be the preferred format for exchanging information and therefore, the legal community must begin to adapt to this change and grant full status to electronic information. Thereafter,

⁹⁵ Security, News and Information about Electronic Filing and Electronic Service from Courts in the United States and around the World (<http://contentcentricblog.typepad.com/ecourts/>), June 21, 2005.

⁹⁶ Middlemiss, *Supra* note 16, p. 187.

⁹⁷ Poulin, *Supra* note 26, p. 42.

courts need to identify which format will best suit all other requirements of the e-filing system such as printability and accessibility. PDF was the preferred format of respondents to the surveys (see Appendix D, question 4, page 93) and is presently the prevailing choice of most systems as it retains the way a document looks. This means that the pages, fonts and other formatting are preserved no matter what type of computer is used to view or print the document. It is critical for the success of e-filing that the choice of format does not impose additional costs on the eventual users of the system.

One additional piece of information required before making a final decision on the electronic format topic is to review which one(s) is/are acceptable to the national archival authority in each country, as well as recommended international standards. With the electronic record becoming the official file, the Secretariat will most probably be in a position to maintain all its records and it remains essential to follow recognized guidelines on this issue.

This issue will need close attention from the steering committee before implementation since it is stated that the Secretariat shall retain a copy of the complete record indefinitely and therefore, the archiving method becomes an important issue for the feasibility of e-filing.

d) Rules

One element that is essential for the successful implementation is the modification of existing rules of procedure that govern the handling of paper documents, and the development of new ones that address the unique nature of electronic filing and service. The rules authorizing electronic filing need to be fully ratified and adopted before a jurisdiction can begin accepting

electronic filings,⁹⁸ and that will be the case with the NAFTA Rules of Procedure that deal with filing and preservation. The purposes of the rules are to:

- 1 - Define the electronic filing system: the rules must provide guidance on where and how to access the system.
- 2 - Authorize electronic filing and service: to add electronic delivery to the existing list of approved methods of document delivery.
- 3 - Clearly specify the procedural mechanics: strive for simplicity.
- 4 - Encourage use of electronic filing: if you want attorneys to use electronic filing, you should say so.⁹⁹

Appendix E (page 98) identifies existing *NAFTA Article 1904 Panel Rules* that would require amendment, and provides a list of new model rules to be considered that would have to be drafted with the eventual implementation of electronic filing.

e) Implementation

Achievement of the implementation of electronic filing for NAFTA disputes will require acceptance and cooperation by the three national governments, the three sections of the Secretariat, panel members, and most of all, by lawyers who file documents.

Experience has shown that courts and lawyers implement electronic filing gradually and do not immediately realize the full benefits. A number of systems have failed due to a lack of interest or commitment on the part of users and administrators. Ironically, the positive aspects of electronic filing are realized only as more and more lawyers and other court users participate in the process and as more and more courts institute such systems as a routine part of their operations.¹⁰⁰

⁹⁸ Olson, Edwards, and Ahalt, *Supra* note 12, p. 6.

⁹⁹ *Ibid.*, pp. 5-6.

¹⁰⁰ Standards, *Supra* note 17, p. 6.

Table 6: Implementation Stages

		<u>STAGES</u>				
		Electronic filing of documents	Electronic service and notification	Access to filings in cases - direct involvement	Access to documents in all cases	Search Functionality
<u>USERS</u>	Secretariat staff	2*	2	1	1	3
	Panel members			1	2	3
	Counsel to proceedings	1	2	2	3	3
	Government trade officials				3	3
	General public				4	4
		<p>Legend: Phase I (month 0) = 1 Phase II (month 12) = 2 Phase III (month 18) = 3 Phase IV (month 24) = 4</p> <p>* = for Secretariat generated documents (i.e. decisions, orders, notices etc.); might be included as part of Phase I.</p>				

It would also appear as though e-filing would best be implemented incrementally in terms of functionality of the system. For NAFTA panel reviews, this would translate into implementing, first and foremost, electronic filing of case documents, including the notice of confirmation of electronic document acceptance by the system. Pleadings in paper format would continue to be accepted for those who cannot file electronically. Scanning would be used to import these documents into the NRIS. This would allow time for panel members, counsel, and staff to familiarize themselves with the system. Then, electronic service of documents, as well as

court-generated documents (i.e. orders, decisions, notices, etc.), should be brought into the equation to allow for the official service of documents on other participants when the rules of procedure prescribe it. One might consider implementing this second functionality at the same time as the first one depending on the level of comfort with the new system. The third functionality should be the addition of a search engine to allow those who have been granted access to the system to search the pleadings' database.

Gradual implementation also means limiting the types of users and their access to the system. As previously mentioned, access to the e-filing interface and the document management system should be open progressively to clients who are most likely to benefit from the system. It is important at this point to define the audience.

Obviously, Secretariat staff will be the first group to access the application as part of their daily tasks. Panel members, and then lawyers, involved in specific panel reviews should be granted access, initially, to cases in which they are parties to, so they can appreciate the benefits offered by the application and its potential as part of an information management strategy, as opposed to being just a rapid transaction mechanism.¹⁰¹ After that, they should be allowed to access information from other proceedings.

Future users granted access should include other trade lawyers and government officials. Finally, as soon as all the key players are comfortable and satisfied with the operations of the application, the information and features e-filing renders possible should be made accessible to the public.

¹⁰¹ "Electronic Filing Study: Report to the Supreme Court of Canada and Federal Court of Canada", COMPAS Inc., April 2002, p. v.

Another important implementation issue is to provide a no-cost e-filing alternative to all litigants by installing public access terminals in the three sections of the Secretariat. It “is a way for jurisdictions to make the service available to all users [...] while at the same time limiting the types of users who may register to e-file remotely over the Internet.”¹⁰² A vital part of the implementation is to ensure fair access to all those who want to file or need a document electronically.

The contents of electronic case files should also be accessible to litigant parties, their attorneys, and members of the public under terms and conditions at least as favorable as those governing access to paper files.¹⁰³

Lastly, when ready to launch, customer support (“help” line) has to be available to assist those unfamiliar with the system, especially in the early stages of the implementation.

f) Challenges

There is a strong concern that e-filing will merely shift the burden of printing documents from the litigants – who are presently required to file paper versions – to the courts, thus creating increased costs. Not to repeat a previously stated argument, but in order to avoid any unnecessary handling and reproduction of documents the electronic file must be granted official record status, and service on other parties of pleadings in electronic form must be authorized. If paper format remains the official record, and if service is only allowed through this method, all that will be accomplished with electronic filing will be the improvement of access. As previously said, any type of e-filing system requires amendments to the court rules for filing as well as those for the preservation of case documents. To achieve this objective under the NAFTA, the three countries’ legislatures must agree on the amendment of the rules of procedure. The problem is that it takes time to amend rules, especially when three countries are involved.

¹⁰² Olson, Edwards, and Ahalt, *Supra* note 12, p. 8.

¹⁰³ Discussion Draft, *Supra* note 22, p. 22.

A concern also exists pertaining to electronic versions of administrative records and appendices, two filings in NAFTA panel reviews that are considerable in size. Do these documents need to be turned into electronic format and if so, who will be responsible to convert them into digital form? Administrative records are the actual investigations of the agencies responsible for trade in the three countries. They are specific to each matter in dispute and are not maintained by the Secretariat once a panel review is completed. They should therefore not be required to be transformed to an electronic format. The cost and time associated with converting these often voluminous pleadings would be a waste of financial and human resources. Unless they are captured electronically at the source, it does not make any sense to have these transformed into digital format by the NAFTA Secretariat. The resources of the three sections are way too limited to take on this responsibility. As for the appendices, the task of compiling jurisprudence and cases electronically might be burdensome on law firms at the beginning, but will eventually become less so as counsel build a repository of these documents. Their inclusion in the electronic court record would be an asset worth its time and effort, especially if a search engine is to be added to the system in the future.

In the same vein as the administrative record, a concern exists with confidential pleadings. How will they be administered in an e-filing environment? As mentioned earlier, security will be indispensable to protect systems and the information that resides on them, but even if protected, the question is still relevant due to the fact that confidential documents are not maintained and must be destroyed by the Secretariat upon the completion of a case. Since backups are necessary as part of the security infrastructure it will be next to impossible to ensure that all electronic documents of a proprietary nature have been disposed of. This aspect will definitely necessitate closer review from those involved in the eventual implementation. Options

might include a separate database for confidential documents for ease of retrieval and destruction, or simply to decide to not include them in the e-filing process and still request hard copies of confidential documents be filed. But until users feel more strongly about being able to submit confidential documents electronically (58% of lawyers who responded believed the most favorable option for the handling of proprietary documents was to submit them in hard-copy), the current practice should continue and confidential documents should be filed in paper format.

g) Financial Considerations

This section identifies the principal costs associated with the development, implementation and maintenance of an electronic filing system. Financial considerations are an important aspect of planning and such a project should not proceed until actual figures are obtained for all the areas mentioned below. “Courts usually must perform at least some preliminary budget analysis as a part of investigating the feasibility of implementing electronic filing”,¹⁰⁴ and important work still needs to be done on this topic before moving ahead with the implementation of e-filing at the NAFTA Secretariat. Although, because the intent of this paper was only to raise the issues, it does not necessarily link dollars with each factor, but serves the purpose of pointing out the areas that will require funding. In other words, this section focuses only on identifying the expenditures courts are most likely to encounter during implementation. Determining the precise e-filing costs will depend on a multitude of factors:

- a) The number of court personnel (panel members and administrative staff);
- b) The number of attorneys and firms including associates, paralegals, and other administrative personnel;
- c) The caseload (volume of cases, docket entries, documents, hearings, etc.);

¹⁰⁴ McMillan, Walker, and Webster, *Supra* note 4, p. 165.

- d) The type, amount, and location of hardware (servers, terminals, printers, imaging equipment);
- e) Software licensing and maintenance agreements; and,
- f) Geographical location of e-filing participants.¹⁰⁵

Many courts assume there is only a nominal cost for developing and implementing an e-filing component to their case management, document, and records management process. In reality the costs of developing, implementing, training, and supporting e-filing and auxiliary services are usually more than initially thought. In addition to the hardware and software required for such a system, courts incur additional costs to integrate electronic filing processes with their case management information system and to meet major training and support obligations. Other costs arise from the need to create an application interface with the court's document management system. Courts can anticipate substantial start-up e-filing expenditures for the initial 12 to 18 months.

When electronic filing is implemented, there is an initial increase in cost of operations because of the start-up expenses associated with planning, acquiring and implementing the new technology.¹⁰⁶

One important financial consideration, due to the lack of specialized resources available to an organization the size of the NAFTA Secretariat, will be to acquire skills and knowledge not available to it. The organization (i.e. steering committee) may wish to consider hiring a consultant or project manager to lead the implementation in close association with an employee who has years of knowledge and experience in order to benefit from both individuals' expertise.

¹⁰⁵ "Potential Court Costs of Implementing E-Filing and E-Serve", News and Information about Electronic Filing and Electronic Service from Courts in the United States and around the World, http://contentcentricblog.typepad.com/ecourts/build_buy_or_partner/index.html, September 12, 2005.

¹⁰⁶ McMillan, Walker, and Webster, *Supra* note 4, p. 12.

Funds will be required for:

i) Management of the Project

The costs associated with the operations of the steering committee and the project team, which will mostly consist of travel costs for the different members. The dispersed location of NAFTA stakeholders will increase these costs considerably but it is critical to involve as many as is necessary to increase chances of success.

ii) Development and Software

Funds will be required for the purchase, or development, of software to accomplish all electronic document functions, including off the shelf software to create documents consistent with the Secretariat's standards, and applications required for the interoperability of the systems, their testing and maintenance.

These costs include the development of the front-end for the e-filing system and the programming of the interface required for the interoperability with the document management system, including additional development costs to modify the existing DMS system. It also includes any required software and accompanying license that might be required to run these applications. The other alternative is to enter into an agreement with a private service provider to accept filings for the court or to purchase an already developed application. Taking into consideration the specialized nature of NAFTA dispute settlement proceedings, this last approach might not be feasible, but would certainly deserve to be more closely examined before making a final decision. If an application is out there that can meet the desired needs with little modification, it should be considered.

The e-filing system configuration will obviously be the biggest expenditure and using open standards becomes essential to protect the investment.

In the medium and long term, open standards enable the court to preserve the initial investment in implementation of the solution and also to benefit from competition among service providers that offer products compatible with the reference standards. A lock-in to a proprietary solution is minimized, while the opportunity to benefit from a competitive market is maximized.¹⁰⁷

iii) Hardware

Procurement of hardware is required to:

- Run the systems;
- Maintain databases;
- Provide public access; and,
- Store archives.

The introduction of electronic filing will not only require additional software, but also computer equipment: new servers, computers for public access terminals in the three sections of the Secretariat, and a comprehensive and integrated backup system that will have to be instituted once the court commits to an e-filing system. Considerations should also be given to the hardware requirements (i.e. servers, scanners, etc.) for the conversion and long-term storage of electronic documents. The Secretariat has already initiated this process with its digitization project, but might want to purchase additional scanners for the offices in Mexico and Washington.

¹⁰⁷ Poulin, *Supra* note 26, p. 83.

iv) Training

Training and roll out costs are real, both in time and dollars. The training for court personnel, panel members, and lawyers is substantial and time-consuming, and experience shows that court staff resources are tied-up for several years. Training is an ongoing process because of continuous new additions to the different user groups.

In summary, expenditures, although important, are not the only financial consideration for courts; potential savings should also be identified as part of their budget planning. For the NAFTA Secretariat, these savings are more than likely to result from less courier and photocopying costs along with savings in storage expenses.

Many courts have resorted to increasing filing fees to finance their e-filing system. The NAFTA dispute settlement process presently does not include any filing fees in its procedures and imposing a fee is not desirable. Surcharges for the filing of or the access to electronic documents should also be avoided. Information that is already available to the public at no charge should continue to be free in the new environment.

The budget planning process is a project in itself when embarking in the implementation of e-filing and project managers/budget planners are encouraged to view the worksheet provided in A Guidebook for Electronic Court Filing as a starting point from which to develop one or more budgeting tools more specifically suited to the needs of their own courts and the approach to electronic filing they choose.¹⁰⁸ The worksheet¹⁰⁹ is provided under Annex G (page 101) for ease of reference.

¹⁰⁸ McMillan, Walker, and Webster, *Supra* note 4, p. 168.

¹⁰⁹ *Ibid.*, pp. 169-170.

In conclusion, it is important to keep in mind three considerations for electronic filing feasibility:

- 1) The courts must choose their timeframe for change and decide how they want to handle filing;
- 2) The system must adapt to the processes of the court, not force the court to adopt new processes; and,
- 3) Documents must be the same in electronic or paper form.¹¹⁰

¹¹⁰ Poulin, *Supra* note 26, p. 39.

VIII. RECOMMENDATIONS

Any court that proposes to implement electronic filing will have to address issues along the way. Taking into account the findings that resulted from the methodology used for this research paper - the literature reviewed, survey results, and the feasibility analysis - this section proposes an approach to alleviate bumps on the road to implementation by presenting logical recommendations to minimize the risks associated with the implementation of an electronic filing system at the NAFTA Secretariat. The suggestions are very concrete and are inspired by what has worked in other jurisdictions, and which are most likely to function and adapt to the present environment for the administration of disputes at the NAFTA Secretariat. They have all been discussed in previous sections of this paper and are being reiterated under two separate categories: administrative and technical recommendations.

a) Administrative

1 - Complete the scanning of archived cases already undertaken by the Canadian Section (see page 9) by digitizing completed panel reviews in Mexico and the United States.

2 - Start using electronic documents for dissemination in active cases by scanning hard copy filings and using the electronic format until e-filing is launched. Once implemented, maintain scanning option for those who will continue to submit paper format, but encourage filing electronically. Eventually, it should become mandatory to have all non-confidential documents submitted electronically.

3 - Create a steering committee and a project team, composed of individuals most likely to lead the development and implementation of e-filing to success. The steering committee

should also, if deemed necessary, create other committees and appoint its members, for example, to address rule changes and to draft policies and procedures.

4 - Organize a tour of the U.S. Court of International Trade in New York by delegates from the NAFTA Secretariat. This organization has emerged in the literature as the closest to the requirements, both in systems and operations, of the NAFTA Secretariat. The site visit should provide an opportunity to look at their setup, review and examine features of the CM/ECF system and to eventually design a model to be adopted as the NAFTA electronic filing system.

5 - Develop an implementation plan.

6 - Prepare a business plan to seek funding from the three governments, including a budget planning of forecasted expenditures and savings, with actual cost figures, associated with the implementation of e-filing.

7 - Solicit participation of stakeholders to increase the chances of a successful implementation.

8 - Obtain official record status for the electronic format and draft electronic filing rules.

9 - Ensure the Secretariat continues to provide the public with free access to their records in the most convenient format available, and that it is able to produce paper records on demand. Traditional access to court records must be maintained through the installation of terminals, including printers, for that purpose in each national section of the Secretariat.

10 - Provide information on the NAFTA Secretariat website when the electronic filing project is launched and update the information when milestones are achieved throughout the process.

11 - Review and re-define employee responsibilities following implementation.

12 - Develop a communication strategy to effectively sell the benefits of e-filing and appease concerns of stakeholders.

13 - Conceptualize the informational and educational components of the system to properly train staff as well as external users. Develop a handbook that includes comprehensive instructions to be used by all concerned by the e-filing system.

14 - Pre-identify a panel review for testing: one that involves a section of the Secretariat and an investigating authority who have previously agreed to participate in the pilot.

15 - Exclude confidential documents from the e-filing process. Get users comfortable with the process and the application running well before even considering including them. Re-assess stakeholders' preferences and expectations on this issue a few years into the project.

16 - Have a staff member join federal/national/international committees and discussion groups, such as EPAC in Canada, to keep informed of new technologies and development with e-filing.

b) Technical

1 - Adopt an approach that will use the Internet as its communication medium. The web represents the best solution to address the geographical situation that is particular to NAFTA proceedings.

2 - Provide procedural forms that can be completed on-line and submitted electronically through the NAFTA Secretariat website.

3 - Develop an electronic filing system comprised of three major components: a) the front-end application to collect mandatory data and serve as the electronic envelope to transmit documents, b) the e-filing system itself to perform required transactions, and c) the document management system. The system should be developed by a private vendor using open standards.

Program the application to enable the NAFTA Registry Information System (NRIS) and the electronic filing system to be interoperable and share data among each other.

4 - Put in place adequate security measures to protect servers and their data. The computer accepting filings should reside outside the court's firewall. To restrict access and accept filings, the system should use a simple and common method of identifying system users: username and password. This identification should be recognized as the signature of filers.

5 - Adopt LegalXML Courtfiling 1.0 standards for the development of the application.

6 - Adopt PDF as the document format for filings and to create procedural forms to be completed online as part of the e-filing system.

7 - Ensure adequate alternative solutions exist in the event of system failure.

8 - Develop a search engine to facilitate work of panel members and access to information.

Although a move towards electronic filing should be initiated in the near future, do not make it mandatory anytime soon. Considering that the NAFTA Secretariat does not receive hundreds of documents a day and, assuming the electronic record obtains official status, those that will continue to be filed in paper format can be scanned in by staff until the full e-filing process is in production.

IX. CONCLUSION

The NAFTA Secretariat has yet to tackle the electronic filing challenge, but the evidence is clear: e-filing is the way of the future. The purpose of this paper was to initiate the thought process and discussions among the three national sections of the NAFTA Secretariat and their respective government by outlining the issues and requirements pertaining to the implementation of electronic filing, and recommending a potential direction for the future. The intent was to review what has been done, as well as assess the expectations and readiness of stakeholders in order to consider the feasibility of e-filing for NAFTA dispute settlement proceedings.

The findings are conclusive and leaders should move forward with the project. Technology has made significant advancements and many options are now available for courts wishing to establish an e-filing system. The growth of the Internet, which offers a reliable communication means, and the automation of document processing lead to the belief that it's only a matter of time before all courts accept electronic pleadings. Security measures have progressed enough to alleviate concerns related to system intrusion and the violation of privacy/confidentiality.

The NAFTA Secretariat initiated enhancements that have opened the door to an eventual implementation of electronic filing. The system infrastructure is in place, and the document management system, the new website, and the scanning projects have all contributed to enable the eventual transition to an electronic environment for trade disputes.

And last, but certainly not least, an impressive majority of stakeholders, through survey results, have indicated their desire to see an e-filing system implemented over a short term horizon and have shown their willingness to use such a system. They have also identified the features of an e-filing approach that would prove to be most beneficial to them. Although

challenges are to be expected, potential benefits offered by electronic filing are the strongest argument to convince decisions makers to move forward with the implementation.

One thing is certain, paper documents will remain part of the NAFTA process for years to come and that service must be maintained. But a paperless system should be attainable over the long term and nothing seems to be preventing the acceptance of the electronic filing initiative, assuming funds are available and rules are amended. Even if electronic service of documents to parties and access to files is not allowed, the implementation of electronic filing would still offer an opportunity to provide panel members with a searchable electronic copy of pleadings, it would reduce costs associated with paper handling, and it would offer a format for archiving.

Recommendations contained in this research paper are congruent with the findings. They are practical and achievable. However, one critical issue remains to be addressed before moving forward with electronic filing. The NAFTA Secretariat and individuals in charge of the project must get the actual costs for all issues mentioned throughout this paper and weigh them against expected benefits. A thorough cost/benefit analysis must be performed in order to clearly evaluate the feasibility of this project. Absent hard cost figures, this project should not proceed.

The NAFTA Secretariat is at a point in its existence where it must look at e-filing to improve the services related to the dispute settlement process it administers. It would seem that the timing to launch an e-filing initiative is good. Other courts have been through the process and their experiences have produced valuable lessons; standards have been developed, and in this day and age individuals are comfortable enough with computers and the Internet. E-filing represents a tremendous task in large jurisdictions. Because the NAFTA Secretariat deals with a limited number of judges and lawyers, implementation should be easier. The key to its success remains the dedication of those involved.

Hopefully, this research paper will help facilitate the process leading to the implementation of electronic filing. It should eventually serve as a reference document for the elaboration of a business plan to obtain the approval to launch a project of electronic filing for the administration of NAFTA disputes.

GLOSSARY

CAS	-	Courts Administration Service
CIT	-	U.S. Court of International Trade
CM/ECF	-	Case Management/Electronic Case Files
CMS	-	Case Management System
COSCA	-	Conference of State Court Administrators
DMS	-	Document Management System
EFSP	-	E-filing Service Provider
EPAC	-	E-Filing Project Advisory Committee
NACM	-	National Association for Court Management
NAFTA	-	North American Free Trade Agreement
NCSC	-	National Center for State Courts
NRIS	-	NAFTA Registry Information System
OCR	-	Optical Character Recognition
PACER	-	Public Access to Court Electronic Records
PDF	-	Portable Document format
PKI	-	Public Key Infrastructure
TIFF	-	Tagged Image File Format
URL	-	Uniform Resource Locator
XML	-	Extensible Markup Language

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APPENDICES

Appendix A - Electronic Filing Survey for Counsel

Appendix B - Electronic Filing Survey for Panel Members

Appendix C - Cover letter sent with surveys

Appendix D - Survey Results

Appendix E - List of Possible Rules of Procedure Changes

Appendix F - Comments gathered from survey respondents

Electronic Filing Survey for Counsel

Thank you for taking the time to complete this questionnaire. Please make sure that all pages are filled out completely. If you have any questions regarding completion of this questionnaire, please call Robert Lalonde at (613) 992-8325.

Please return your completed survey by fax before September 1, 2005 at (613) 992-9392.

SECTION 1: GENERAL

1. Are you familiar with electronic filing systems?

Yes ___
No ___

2. Have you ever used electronic filing to submit documents with any court/tribunal?

Yes ___
No ___

If you answered “Yes”, how beneficial was it to you?

3. How likely are you to use E-filing if the NAFTA Secretariat was to implement one?

	Very Likely	Somewhat Likely	Not Likely
In the next twelve months			
In the next three years			
In the next five years or more			

4. In which format would you prefer to file your pleadings, if an electronic filing system was implemented?

MS Word _____
WordPerfect _____
PDF _____
All _____
Other, please specify: _____

SECTION 2: POTENTIAL BENEFITS OF AN E-FILING SYSTEM

5. The table below contains a series of eleven statements about the potential benefits of an E-filing system. Please select in the appropriate column to the left of the statements the attribute you believe will be of the **greatest** benefit. For every other attribute, please indicate whether it will provide a **significant** benefit, a **modest** benefit, or **no benefit** at all.

Greatest Benefit (Select one only)	SERVICE ATTRIBUTES	Significant Benefit	Modest Benefit	No Benefit
	A single point of access for all filings, regardless of the Section of the NAFTA Secretariat			
	The ability to initiate proceedings and file documents electronically			
	The ability to electronically serve parties in a proceeding			
	The ability to file documents electronically, twenty-four hours a day, seven days per week			
	The ability to receive Email confirmations for all documentation filed or served			
	The ability to access an electronic record of documents in panel reviews where I have direct involvement			
	The ability to access an electronic record of panel reviews in general, whether or not I am involved in them			
	The ability to perform full text searches within individual documents and across an entire file system			
	Increased public access to panel review files, including remote access			
	Reduced need for filing of duplicate paper copies by counsel			
	The ability of phone support to resolve technical difficulties			

6. Please rate how beneficial you believe an E-filing initiative would be to:

	Very Beneficial	Somewhat Beneficial	Not Beneficial
Attorneys / Counsel			
Panelists			
General Public			
Governments party to the NAFTA			
Court Procedures and Staff			

SECTION 3: POTENTIAL CHALLENGES TO E-FILING

7. The table below contains five statements regarding general apprehensions about E-filing systems. For each statement in the table, please check whether you strongly agree, agree, disagree or strongly disagree with the statement.

	Strongly Agree	Agree	Disagree	Strongly Disagree
Documents sent or received electronically are less secure than documents sent or received by courier or hand delivery				
Assembling the record and a book of authorities electronically (e.g. by having to scan them) will be more difficult than it is now				
Electronic document delivery is less reliable than courier or hand delivery of documents				
Filing documents electronically would require substantial training for myself and my staff				
An E-filing system will result in more paperwork rather than less				

Please list any other issues/concerns you might have about an eventual electronic filing system:

8. The following set of statements applies to some of the specific features that may be a part of an E-filing system. For each statement in the table, in the right-hand columns, please check whether you strongly object to the feature, somewhat object, or have no objection at all. In the left-hand column, please indicate which of the features listed, *if any*, elicit your strongest objection.

Strongest Objection	SERVICE CONDITIONS	Strongly Object	Somewhat Object	No Objection
	All documents submitted in one standard file format			
	All documents submitted in hard-copy as well as electronically			
	Public documents I have filed in cases being made available electronically to the general public			
	Public documents I have filed in cases being made available electronically to other counsel			

9. The following question deals with the handling of **proprietary** documents. Please select one of the two options below as your most favorable way of handling **proprietary** pleadings.

OPTIONS	Select
File all documents, including proprietary documents, using a secure electronic filing system (e.g. password or encryption)	
File all public documents electronically and submit proprietary versions in hard-copy	

Please make any additional comments you think might be of interest concerning **proprietary** documents:

SECTION 4: OTHER ISSUES

10. Do you believe there are any legal limitations to the NAFTA Secretariat disseminating electronic public documents through the Internet?

Yes ___
No ___

If you answered “Yes”, please comment:

11. Would the NAFTA Secretariat enhance its image with the implementation of E-filing?

Yes ___
No ___

12. Are there any additional issues/comments/barriers you feel would impact the implementation of an electronic filing system at the NAFTA Secretariat?

Electronic Filing Survey for Panel Members

Thank you for taking the time to complete this questionnaire. Please make sure that all pages are filled out completely. If you have any questions regarding completion of this questionnaire, please call Robert Lalonde at (613) 992-8325.

Please return your completed survey by fax before September 1, 2005 at (613) 992-9392.

SECTION 1: GENERAL

1. Are you familiar with electronic filing systems?

Yes ___
 No ___

2. Have you ever used an electronic filing system to submit or access documents with any court/tribunal?

Yes ___
 No ___

If you answered “Yes”, how beneficial was it to you?

3. The table below contains statements regarding how you, as a panel member, are most likely to handle electronic documents forwarded to you as part of a case. Please select in the appropriate column to the left of the statements the statement you believe is most probable to be **your situation**. For every other attribute, please indicate whether it will definitely, probably, or not at all be your situation.

Most Probable (Select one only)	STATEMENTS	Definitely	Probably	Not at all
	I would still request hard copies be sent to me			
	I would access documents electronically and print all of them to facilitate my review			
	I would access documents electronically and print those that I need			
	I would review all documents electronically without any printing			

SECTION 2: POTENTIAL BENEFITS OF AN E-FILING SYSTEM

4. The table below contains a series of seven statements about the potential benefits of electronic filing. Please select in the appropriate column to the left of the statements the attribute you believe will be of the **greatest** benefit. For every other attribute, please indicate whether it will provide a **significant** benefit, a **modest** benefit, or **no benefit** at all.

Greatest Benefit (Select one only)	SERVICE ATTRIBUTES	Significant Benefit	Modest Benefit	No Benefit
	The ability to access an electronic record of documents in panel reviews where I have direct involvement			
	The ability to access an electronic record of documents in panel reviews in general, whether or not I am involved in them			
	The ability to perform full text searches within individual documents and across an entire file system			
	A single point of access for all filings, regardless of the Section of the NAFTA Secretariat			
	The ability for the Secretariat to electronically serve parties in a proceeding			
	The ability to increase public access to panel review files, including remote access			
	The availability of phone support to resolve technical difficulties			

5. Please rate how beneficial you believe an E-filing initiative would be to:

	Very Beneficial	Somewhat Beneficial	Not Beneficial
Panel Members			
Attorneys / Counsel			
Governments party to the NAFTA			
Court Procedures and Staff			
General Public			

SECTION 3: POTENTIAL CHALLENGES TO E-FILING

6. The table below contains three statements regarding general apprehensions about electronic filing systems. For each statement in the table, please check whether you strongly agree, agree, disagree or strongly disagree with the statement.

	Strongly Agree	Agree	Disagree	Strongly Disagree
Documents sent or received electronically are less secure than documents sent or received by courier or hand delivery				
Accessing documents electronically would require substantial training for myself and my staff				
An E-filing system will result in more paperwork rather than less				

Please list any other issues/concerns you may have about an eventual electronic filing system:

7. The following question deals with the handling of **proprietary** documents. Please select one of the two options below as your most favorable way of handling **proprietary** pleadings.

OPTIONS	Select one
Access all documents, including proprietary documents, using a secure electronic filing system (e.g. password or encryption)	
Access all <u>public</u> documents electronically and receive proprietary versions in hard-copy	

Please make any additional comments you think might be of interest concerning **proprietary** documents:

SECTION 4: OTHER ISSUES

8. Do you believe there are any legal limitations to the NAFTA Secretariat disseminating electronic public documents through the Internet?

Yes ___
No ___

If you answered “Yes”, please comment:

9. Would the NAFTA Secretariat enhance its image with the implementation of E-filing?

Yes ___
No ___

10. Are there any additional issues/comments/barriers you feel might impact the implementation of an electronic filing system at the NAFTA Secretariat?

August 3, 2005

Name
Address

Subject: Electronic Filing Survey for Panelist

Let me introduce myself. My name is Robert Lalonde and I am the Deputy Registrar for the Canadian Section of the NAFTA Secretariat. As part of my professional development, I am presently taking part in the Court Executive Development Program (CEDP) of the Institute for Court Management – National Center for State Courts (Williamsburg, VA).

As part of this rigorous, high quality educational program, I am doing a research project on the feasibility of electronic filing as a means of improving access to documents and their internal handling for all pleadings in panel reviews filed with the NAFTA Secretariat.

I am therefore asking for your assistance in providing information in order to identify the needs and trends with respect to E-filing by completing the attached survey. If, in the end, you have no objection to me contacting you for additional information or clarification, please indicate your name, phone number, and e-mail address on the last page of the survey. Let me assure you that your responses will be treated in the strictest confidence and that my study will only provide cumulative results without naming any individuals.

Your participation is essential to the success of my research, and therefore of my course. You may return your results to my attention by fax at (613) 992-9392 or by mail. **It would be greatly appreciated if the survey could be returned before September 1, 2005.**

If you have any questions, please do not hesitate to contact me at (613) 992-8325. I want to personally thank you for taking the time to fill out this questionnaire.

Sincerely,

Robert Lalonde
Deputy Registrar

RESULTS***Electronic Filing Survey for Counsel and Panel Members*****RESPONSE RATE**

	SURVEYS		
	Sent	Received	% of Response
Counsel			
Canada	16	7	44%
United States	34	12	35%
Sub-Total:	50	19	38%
Panel Members			
Canada	22	16	73%
United States	27	13	48%
Sub-Total:	49	29	59%
TOTAL:			
	99	48	48%

SECTION 1: GENERAL

1. Percentage of those who answered “Yes” to: Are you familiar with electronic filing systems?

	Counsel		Panel Members	
	Canada	U.S.	Canada	U.S.
	71%	100%	56%	77%
Sub-Total:	89%		66%	
TOTAL:	75%			

2. Percentage of those who answered “Yes” to: Have you ever used electronic filing to submit or access documents with any court/tribunal?

	Counsel		Panel Members	
	Canada	U.S.	Canada	U.S.
	43%	100%	44%	38%
Sub-Total:	79%		41%	
TOTAL:	56%			

3. **Counsel** - how likely are you to use E-filing if the NAFTA Secretariat was to implement one?

	Counsel		
	Very Likely	Somewhat Likely	Not Likely
In the next twelve months	79%	16%	5%
In the next three years	84%	16%	-
In the next five years or more	84%	16%	-

4. **Counsel** - In which format would you prefer to file your pleadings, if an electronic filing system was implemented?

Format	%
MS Word	11%
WordPerfect	-
PDF	84%
All formats	5%
Other	-

5. **Panel Members** - Percentage of those who either identified the statement as the ‘**Most Probable**’ one or ‘**Definitely**’ the one of how they are most likely to handle electronic documents forwarded to them as part of a case.

STATEMENTS	%		
	Canada	U.S.	Total
I would still request hard copies be sent to me	19%	23%	21%
I would access documents electronically and print all of them to facilitate my review	6%	8%	7%
I would access documents electronically and print those that I need	75%	69%	72%
I would review all documents electronically without any printing	-	-	-

SECTION 2: POTENTIAL BENEFITS OF AN E-FILING SYSTEM

6. **Counsel** - Percentage of lawyers who either identified the service attribute as the “**Greatest Benefit**” or one that offers “**Significant Benefit**” in a series of eleven statements about the potential benefits of an E-filing system.

SERVICE ATTRIBUTES	Greatest Benefit	Total*
A single point of access for all filings, regardless of the Section of the NAFTA Secretariat	11%	58%
The ability to initiate proceedings and file documents electronically	---	68%
The ability to electronically serve parties in a proceeding	---	79%
The ability to file documents electronically, twenty-four hours a day, seven days per week	5%	58%
The ability to receive Email confirmations for all documentation filed or served	---	37%
The ability to access an electronic record of documents in panel reviews where I have direct involvement	42%	84%
The ability to access an electronic record of panel reviews in general, whether or not I am involved in them	---	63%
The ability to perform full text searches within individual documents and across and entire file system	11%	89%
Increased public access to panel review files, including remote access	---	32%
Reduced need for filing of duplicate paper copies by counsel	11%	74%
The ability of phone support to resolve technical difficulties	---	32%
No “greatest benefit” identified in surveys returned:	20%	

* Includes respondents that identified the service attribute as being the “Greatest Benefit” or as offering “Significant Benefit”.

7. **Panel Members** - Percentage of panelists who either identified the service attribute as the ‘**Greatest Benefit**’ or one that offers ‘**Significant Benefit**’ in a series a series of seven statements about the potential benefits of electronic filing.

SERVICE ATTRIBUTES	Greatest Benefit	Total*
The ability to access an electronic record of documents in panel reviews where I have direct involvement	52%	86%
The ability to access an electronic record of documents in panel reviews in general, whether or not I am involved in them	10%	48%
The ability to perform full text searches within individual documents and across and entire file system	17%	59%
A single point of access for all filings, regardless of the Section of the NAFTA Secretariat	---	45%
The ability for the Secretariat to electronically serve parties in a proceeding	3%	55%
The ability to increase public access to panel review files, including remote access	7%	38%
The availability of phone support to resolve technical difficulties	---	31%
No “greatest benefit” identified in surveys returned:	11%	

* Includes respondents that identified the service attribute as being the “Greatest Benefit” or as offering “Significant Benefit”.

8. Percentage of those who believe an E-filing initiative would be “**Very Beneficial**” to:

	Counsel	Panel Members	Total
Attorneys / Counsel	84%	83%	83%
Panelists	68%	72%	71%
General Public	21%	28%	25%
Governments party to the NAFTA	53%	62%	58%
Court Procedures and Staff	74%	69%	71%

SECTION 3: POTENTIAL CHALLENGES TO E-FILING

9. Percentage of those who agree with the following statements regarding general apprehensions about E-filing systems.

	% who agree	
	Counsel	Panel Members
Documents sent or received electronically are less secure than documents sent or received by courier or hand delivery	58%	48%
Assembling the record and a book of authorities electronically (e.g. by having to scan them) will be more difficult than it is now	21%	n/a
Electronic document delivery is less reliable than courier or hand delivery of documents	11%	n/a
Filing documents electronically would require substantial training for myself and my staff	26%	17%
An E-filing system will result in more paperwork rather than less	5%	14%

10. **Counsel** – Percentage of lawyers who had “**No Objection**” with the following statements that apply to some of the specific features that may be part of an E-filing system.

SERVICE CONDITIONS	% No Objection
All documents submitted in one standard file format	84%
All documents submitted in hard-copy as well as electronically	11%
Public documents I have filed in cases being made available electronically to the general public	95%
Public documents I have filed in cases being made available electronically to other counsel	100%

11. Percentage of those who believe the **most favorable** option for the handling of **proprietary** documents should be:

OPTIONS	%		
	Counsel	Panel Members	Total
File/access all documents, including proprietary documents, using a secure electronic filing system (e.g. password or encryption)	42%	57%	50%
File/access all public documents electronically and submit proprietary versions in hard-copy	58%	42%	50%

SECTION 4: OTHER ISSUES

12. Percentage of those who answered “**Yes**” to: Do you believe there are any legal limitations to the NAFTA Secretariat disseminating electronic public documents through the Internet?

	Counsel		Panel Members	
	Canada	U.S.	Canada	U.S.
	-	8%	13%	23%
Sub-Total:	5%		17%	
TOTAL:	13%			

13. Percentage of those who believe the NAFTA Secretariat would enhance its image with the implementation of E-filing?

	Counsel		Panel Members	
	Canada	U.S.	Canada	U.S.
	86%	92%	81%	85%
Sub-Total:	89%		83%	
TOTAL:	85%			

***List of Rules of Procedure Requiring Changes
and Possible New Model Rules
for Electronic Filing***

Following are existing NAFTA Rules of Procedure that would require examining and re-writing when necessary, and possible new model rules to be drafted, with the eventual implementation of electronic filing of pleadings. These amendments follow the proposed rules contained in the “Standards for Electronic Filing Processes (Technical and Business Approaches)” and the *LexisNexis File and Serve* publication “A Guide to Model Rules for Electronic Filing and Service”.

Existing NAFTA Article 1904 Panel Rules that would need to be reviewed and amended

- Rule 10(1) – File to be maintained for each panel review by each Secretary (with e-filing the system shall be responsible to maintain the official file for all Secretaries. “Official” will need to be re-defined to include electronic formats).
- Rule 11 – Transmittal to the other involved Secretary no longer required.
- Rule 15 – Handling of proprietary information.
- Rule 22 – Filing requirements pertaining to copies of the original and time period fixed for filing.
- Rules 24, 25 & 26 – Service of pleadings.
- Rule 35(1)(a) – Transmittal of a request for panel review to the other Secretary.
- Rule 41 – Administrative record requirements (will depend on whether or not the administrative record will be included in the documents accepted electronically).
- Rules 44 & 45 – Filing or service of documents under seal.
- Rules 55 & 56 – Form and content of pleadings.

Procedural forms might also be modified to request counsel to state if he/she intends to use electronic filing to submit pleadings in the proceeding.

Possible New Model Rules

- (1) The effective date of the electronic filing rules.
- (2) The establishment of the voluntary or mandatory nature of the submission of documents in electronic form.
- (3) In a voluntary electronic filing process, the Secretariat will ensure the scanning capability is maintained to file documents electronically.
- (4) The Secretariat may issue, file, and serve notices, orders, and other documents electronically.
- (5) The following pleadings shall be filed and served electronically (list the documents).
- (6) The following pleadings may not be filed electronically (list the documents).
- (7) The formatting of electronic documents shall respect the rules governing paper format.
- (8) Signatures (i.e. anyone provided with a unique identifier for purposes of filing documents electronically will be deemed to have filed and signed the document).
- (9) Determining when a document is filed - time and effect of e-filing (establish the hours of operation for electronic filing and the legal effect of filing outside of regular court office hours).
- (10) Printed copies of documents shall be maintained by the filing party, and made available upon request, until final disposition of the case.
- (11) The Secretariat may maintain the original and official panel review file in electronic format (paper records, if maintained, will be considered a copy of the official court record).
- (12) Archiving requirements for electronic documents.
- (13) Service of filings on opposing parties (delivery of e-service documents shall be considered as valid and effective as service by courier).
- (14) The following users are authorized to register and use the electronic filing system (i.e. counsel, panel members, Secretariat staff, etc.).
- (15) How to register to be an authorized user (create a process for registering official system users and provide them with a unique identifier).
- (16) System failure or user filing errors (i.e. have rules to address error in transmission, failure of the system or the Internet, exclusion by error of parties on the service list, etc.).
- (17) Add the definitions of “Electronic Filing”, “Electronic Service”, and “Public Access Terminal”.

Comments Gathered from Survey Respondents

“Very useful for getting immediate access.”

“U.S. Court of International Trade is a good example.”

“Briefs and similar documents are likely problem-free because invariably prepared electronically. To require evidence that is not in electronic form to be scanned is very expensive. There has to be discretion for such material.”

“Electronic filing eliminates a significant amount of paper work”.

“Only if the appropriate resources were allocated to design and maintain the system. Done poorly, electronic filing would be a disaster.”

“Once we become accustomed to the procedure, very beneficial.”

“U.S. CIT: very easy, especially for simple filings (eg. Notice of appearance, etc.)”

“Proficiency increased dramatically when court announced it would no longer accept paper filing. Many complained, but over time most found it to be worthwhile.”

“In order for electronic filing to work well, it requires a trained technical system. Based on our experience, the NAFTA Secretariat does not yet have the appropriate resources and would need (as has been done with other court systems) to hire technical staff and provide appropriate computer resources at some cost in order to design and maintain such a system.”

“Even if secure and limited by passwords of involved parties, proprietary NAFTA case filings should not be placed on any electronic system.”

“Nowadays, such documents are invariably created electronically, and are therefore available for electronic filing without significant additional effort.”

“Proprietary documents will be the key to establishing a worthy electronic filing system. The system must allow easy access to proprietary documents for those who have proper clearance while keeping them secure from everybody else. Selling this idea will require convincing the stakeholders that this system can balance these competing concerns.”

“Given today’s concerns over transparency and the public’s right to access information, the time to consider electronic filing is ripe.”

“The filings should be in PDF to avoid being able to reverse the changes and uncover opponents work product. However, such a form would significantly reduce the benefits of an electronic database with respect to full text searches.”

Electronic Filing Budget Planning Worksheet			
	Year 1 Costs	Year 2 Costs	Year 3 Costs
Organizational Readiness			
Educational materials, services, conference fees, travel, etc.			
Consulting fees			
Other expenses			
Human Resources			
Preliminary education and training			
Initial planning activities			
Develop conceptual design and implementation plan			
Other activities			
Upgrade of Existing Technology			
Case Management System			
Application software replacement or upgrade			
Server hardware upgrades			
Client/PC upgrades			
Contractor services			
Hardware maintenance			
Other expenses			
Human Resources			
Develop and implement additional functions			
Perform or manage hardware upgrades			
Prepare and deliver training, documentation, user support			
Court staff time for training			
Other activities			
Document Management System			
Document management software purchase			
Document server hardware			
Client/PC hardware upgrade or purchase			
Peripheral hardware/software (e.g., scanners, monitors)			
Contractor services			
Hardware maintenance			
Other expenses			
Human Resources			
Staff time for acquisition and integration			
Perform or manage hardware upgrades or installations			
Prepare and deliver training, documentation, user support			
Court staff time for training and parallel testing			
Other activities			
General Network Infrastructure			
Upgrade cabling, hubs, routers, etc. for increased traffic			
Upgrade server processor, memory, disk capacity			
Upgrade network OS, monitoring, and security software			
Upgrade modems and phone lines for local dial-up			
Implement or upgrade network fax capability			
Implement or upgrade e-mail and office productivity software			
Upgrade system backup capabilities			
Uninterruptible power supplies (UPS)			
Upgrade PCs and monitors (if not already covered above)			

Additional public terminals for case information access			
Additional conditioned space for components or staff			
Hardware maintenance			
Other expenses			
Human Resources			
Planning, analysis, and management of network upgrades			
Technical staff time to accomplish network upgrades			
Other activities			
Internet Capabilities			
Servers (Web, e-mail, proxy, etc.)			
Additional communications hardware and software			
Server software and Web development tools			
Browser software and other end-user tools			
High-speed phone lines (ISDN, T1, etc.)			
Security(firewall hardware/software, etc.)			
Internet service provider fees			
Hardware maintenance			
Consulting fees			
Other expenses			
Human Resources			
Planning and mgmt of Internet implementation/upgrade			
Staff time to implement or upgrade Internet components			
Staff for webmaster and Internet technician positions			
Prepare and deliver training, documentation, user support			
Court staff time for training			
Other activities			
Implementation of E-Filing Component			
Separate e-filing server with fault-tolerance or redundancy			
Uninterruptible power supplies (UPS)			
Backup capabilities for E-filing transactions			
E-filing application software or interface with service provider			
User billing and accounting software, if separate			
Consulting fees			
Other expenses			
Human Resources			
"Marketing" and education for legal community			
Detailed planning and development of court procedures			
Planning, analysis, and management of implementation			
Technical staff time for installation and testing of components			
Training and support of court staff and attorney users			
Court staff time for training			
Court and technical staff time for parallel testing			
Billing and accounting (if additional procedures)			
Other activities			
TOTALS			
Equipment, Software, Services, and Other Costs	0	0	0
Human Resources Costs	0	0	0
Grand Total Costs	\$0	\$0	\$0