

UNIFORM ELECTRONIC LEGAL MATERIAL ACT SUMMARY AND FREQUENTLY ASKED QUESTIONS

The Uniform Electronic Legal Material Act (UELMA) is a uniform law that addresses many of the concerns posed by the publication of state primary legal material online. UELMA provides a technology-neutral, outcomes-based approach to ensuring that online state legal material deemed official will be preserved and will be permanently available to the public in unaltered form. It furthers state policies of accountability and transparency in providing legal information to the public. UELMA has become law in Washington, D.C. and sixteen states: Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Maryland, Minnesota, Nevada, North Dakota, Oregon, Pennsylvania, Washington, and West Virginia.

WHY IS UELMA NECESSARY?

Increasingly, state governments are publishing primary legal material such as state statutes, regulations, and court opinions online. Online publication is often accompanied by the decision to stop providing print copies of the legal material. Although online publication has facilitated public access, it has also raised a number of concerns about ensuring that the electronic material will be preserved in unaltered form and will be available permanently. UELMA offers a framework for providing the official legal material online with the same level of trustworthiness traditionally given by print publication.

WHAT LEGAL MATERIAL IS COVERED BY THE ACT?

The act applies to electronic legal material that has been designated official. Four categories of basic state legal material are specifically named in the act, including the state constitution, state session laws, codified laws, and agency regulations which have the effect of law. The state has discretion to include any other publications it desires.

WHAT DOES UELMA REQUIRE?

The act requires that if legal material is published only in electronic form, it must be designated official. Electronic legal material that has been designated official must be:

- Capable of being authenticated (the state must provide the user with a method to determine that the legal material is unaltered);
- preserved (the state may choose to preserve either in electronic or print form); and
- permanently accessible to the public.

If a state preserves legal material electronically, it must provide for back-up and recovery and it must ensure the integrity and continued usability of the material.

WHAT IS MEANT BY THE TERM “AUTHENTICATION”?

Authentication is a process that gives the user of legal material an assurance of trustworthiness for that legal material.



According to a study by the American Association of Law Libraries (AALL), “An authentic text is one whose content has been verified by a government entity to be complete and unaltered when compared to the previous version approved or published by the content originator.” AALL, *State-By-State Report on Authentication of Online Legal Resources* (2007), bit.ly/AALLonlinereport. UELMA mandates that the official publisher of electronic legal information give the user of the information a way in which to authenticate the information; that is, to ensure that the information is unaltered.

WHAT IS THE EFFECT OF AUTHENTICATION?

If electronic legal material is authenticated, it is presumed to be an accurate copy of the legal material. UELMA gives authenticated electronic legal material a presumption of accuracy similar to the presumption of accuracy given to print legal material. If your state enacts UELMA, the presumption that your authenticated electronic legal material is accurate applies in every other state that has enacted UELMA. If another state enacts UELMA, and authenticates its electronic legal material, it is presumed to be an accurate copy for use in your state. Adoption of UELMA will harmonize standards for acceptance of electronic legal material across jurisdictional boundaries.

WHEN DOES THE ACT APPLY?

The act applies prospectively, to official electronic legal material that is first published on or after the effective date of the act. Each state or territory has the flexibility to choose an effective date that works best for that jurisdiction. After the effective date, if an enacting state publishes official legal material online that was not previously published in electronic form, UELMA requirements apply to the newly-published official electronic material.

ARE THERE ISSUES NOT ADDRESSED BY UELMA?

Yes. For instance, the act has no effect upon relationships between an official state publisher and a commercial vendor who produces the legal material, leaving such relationships to contract law. The claim of copyright in state publications is a local matter unaffected by the act. The act has no effect upon the rules of evidence; judges decide whether electronic legal material is admissible in their courtrooms.

WHAT DOES THE ACT REQUIRE REGARDING TECHNOLOGY STANDARDS FOR ELECTRONIC LEGAL MATERIAL?

Rather than mandating a specific standard, the act requires that the state consider the most recent methods and best practices for preservation, authentication, and access to electronic material. By using an outcomes-based, technology-neutral approach, UELMA recognizes that technology will evolve, and the act encourages collaboration and cooperation among states in developing standards and compatible systems. For more information, see the California Office of Legislative Counsel’s white paper, “Authentication of Primary Legal Materials and Pricing Options,” bit.ly/CAOLCauthentication. For a recent paper about the Minnesota model, see “Prototype for Authentication of Official Electronic Record and Pricing,” bit.ly/MNprototype.