

CTC10

**Authentic Legal Information in
the Digital Age:
Where Do We Go From Here?**

**October 2-4, 2007
Tampa, Florida**

Program Speakers

- **Timothy L. Coggins**
 - Associate Dean for Library & Information Services & Professor of Law, University of Richmond School of Law
- **Mary Alice Baish**
 - Associate Washington Affairs Representative, American Association of Law Libraries
- **Herbert B. Dixon, Jr.**
 - Associate Judge, Superior Court of the District of Columbia, & Immediate Past Chair, National Conference of State Trial Judges

Questions for this Session

- How trustworthy are state-level primary legal resources on the Web?
- Are courts prepared to deal with non-authenticated and “unofficial” legal information?

Questions for this Session

- What are states and the federal government doing to authenticate and designate as official primary legal resources?
- Where do we go from here?

AALL's Vision and Core Values

- To ensure equitable and permanent public access to authentic legal information
- Government information –
 - Valuable public good created at taxpayer expense

AALL's Core Values

- Comprehensive
- Trustworthy and reliable
- Accessible to all people
- “Official” and designated as such by statute or rule
- Preserved and permanently accessible

Importance of Electronic Life Cycle Management

- What is “e-life cycle management”?
 - Creation
 - Finding tools
 - Permanent public access
 - Authentication
 - Preservation



AALL Reports on the Electronic Life Cycle

- 2003 AALL 50-State Report on Permanent Public Access to Electronic Government Information (PPA).
- 2007 AALL 50-State Report on Authentication of Online Legal Resources.

AALL 2006 State Survey on Authentication

- Goal:
To determine which states, if any, have adopted website versions of primary legal resources as *official* and/or *authentic*.

AALL 2006 State Survey on Authentication

- Six online sources checked:
 - administrative code and administrative register
 - session laws and statutory code
 - information from Supreme Court and intermediate appellate court, including opinions.

What is Official?

- Mandated or approved by statute or rule.
- An online *official* legal resource has the same status as a print *official* legal resource.
- The fixed nature of print, plus multiple copies and wide distribution, ensure that the print *official* legal resource is an *authentic* resource.

GPO's Definition of *Authentic*

- Content verified by a government entity to be complete and unaltered when compared with the version approved or published by the content originator.
- Authentic text will typically bear a certificate or mark that conveys information as to its certification.
- Encryption, digital signatures, PKI & “chain of custody” planned for GPO's Future Digital System (FDsys).
- New GPO Pilot: Authenticated Public and Private Laws of the 110th Congress.



Key Finding # 1

- ***States are discontinuing print official resources and substituting online official sources.***
- This trend will continue.
- State agencies believe they are serving citizens best by providing online access to legal sources.
- State agencies save print and distribution costs by publishing only online.

Online Versions Are the Sole *Official* Resource

- 5 states – Alaska, Indiana, New Mexico, Tennessee and Utah – give official status to their online legal resources.
- None are authenticated and only Utah requires PPA.
- The disappearance of print *official* legal resources without an *authentic* online substitute threatens trustworthiness of the resources.

Key Finding # 2

- *Ten states & D.C. have designated as official one or more of their online primary legal resources.*
- Alaska, Indiana, Maryland, Michigan, Minnesota, New Mexico, New York, Tennessee, Utah and Virginia & the District of Columbia.
- 23 sources of law (primarily regulatory) are available in online repositories that are considered *official*.

Key Finding # 3

- ***Eight states have “official traits,” but evidence as to the actual status of the resources is conflicting.***
- The word “official” is not always used on a resource; or,
- “Official” is there, but the online resource isn’t considered as *official* as the print version; or,
- The *official* status is noted with no information as to why it is *official* (e.g., statutory authority or court rule).

Key Finding # 4

- *States have not been sufficiently deliberate in their policies and practices.*
- States have not acknowledged important needs of citizens and researchers who seek government information.
- States have not considered the issues raised when their only legal resources are not authenticated.
- New ARJD Principles for “Official” On-line Documents parallel our findings.

Our Recommendations

- Provide a clear statement of the *official* status and source of authority for same.
- Use the designation *official* with care, to avoid confusion.
- Titles for online and print should be consistent.
- Identify print *official* sources and tell where to find them.
- Resolve and communicate differences in currency between print and online.

Our Recommendations (cont'd)

- Identify source of data, its “chain of custody” and relevant processes.
- Prominently display any representations and disclaimers, and provide the specific scope of such.
- Develop thorough policies, procedures and rationales.
- Address *official* status, authentication and PPA for online resources.

Key Finding # 5

- *No state's online primary legal resources are authenticated or afford ready authentication by standard methods.*
- Minnesota, Ohio, Vermont, and Virginia are beginning to address the problem.
- Eight other states – Alabama, Arkansas, Connecticut, Maryland, Montana, Ohio, South Carolina, and Tennessee – perceive authentication as a specific concern that warrants attention.



Key Finding # 6

- *Since our 2003 report, nine states have provided for PPA for one or more of their online primary legal resources.*
- AK, CA, IN, MN, MT, OH, PA, TX and UT
- In Montana, newly enacted H.B. 132 mandates PPA “regardless of format or medium.”
- “The state library shall coordinate with state agencies and depository libraries to ensure permanent public access to state publications.”

Conclusions

- Online legal resources are increasingly the sole *official* published source.
- *Official* status requires authentication procedures (encryption, digital signatures, PKI, “chain of custody” information).
- The goal is that online legal resources will be as trustworthy as print.



National Summit on Authentication of Online Legal Resources

- Convened by AALL, April 20-21, 2007.
- 50 delegates from ABA, NCSL, NCCUSL, state courts, state archives, state legislative IT services & federal officials.
- Sessions on Authentication Report and findings, technological and legal challenges.
- Breakout sessions on challenges and on building alliances.
- A great success, but just the beginning!



Where Do We Go From Here?

- Education and outreach – articles, programs.
- Technology initiatives – develop standards; possible state initiatives in CT, DE, MN, NM, WA.
- Legal initiatives – NCCUSL study committee; changes to court rule; “best practices” manual.
- Advocacy – build alliances at state, national and international levels.
- More on Summit & follow-up at:
<http://www.aallnet.org/summit/>

Please Join Us!

- What are the technological obstacles to be overcome in your state?
- What are the legislative obstacles to be overcome in your state?
- How can alliances be built in your state?