Back to the Future of Legal Research

The Future of Primary Legal Resources on the Web

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May 18, 2007
Two Important Studies on E-Life Cycle Management


2006 State Authentication Survey

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

• Six online state sources checked: administrative code, administrative register, session laws, statutory code, state Supreme Court and intermediate appellate court information, 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).
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.

- 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

- 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.
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?