

AUTHENTICATION OF ONLINE STATE LEGAL MATERIALS

Report on Uniform Law Study Committee · Minnesota Update

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How did this Uniform Law project get started?

American Association of Law Libraries
(AALL) Study:

*State by State Report on Authentication
of Online Legal Resources*
March, 2007

www.aallnet.org – click on “Publications”

AALL study findings:

- ◆ States have begun to discontinue print official legal resources and substitute online
- ◆ No state's online primary legal resources are authenticated
- ◆ Only some states have provided for permanent public access to online primary resources

AALL followed study with a conference:

National Summit on Authentication
of Digital Legal Information
April 20-21, 2007, in Chicago

Approximately 50 delegates:

- ◆ judiciary
- ◆ legal community
- ◆ state governments
- ◆ interested organizations

Summit resulted in initiatives:

- ◆ Education
- ◆ Technological
- ◆ Legal
- ◆ Advocacy
- ◆ Communication and Follow-Up

One Legal initiative was proposal to ULC:

- ◆ NCCUSL = ULC
 - ◆ National Conference of Commissioners on Uniform State Laws is official name
 - ◆ Uniform Law Commission is working name
- ◆ Project proposal submitted June 11, 2007
 - ◆ Create study committee
 - ◆ Determine if uniform or model law is warranted
- ◆ Considered by scope and program committee in July, 2007

ULC Question: What is the objective?

- ◆ AALL Answer:
 - ◆ Online legal resources should be trustworthy
 - ◆ Trustworthiness includes:
 - ◆ Authentication
 - ◆ Permanent Accessibility
 - ◆ Preservation
 - ◆ Uniform law would require consideration of these factors before eliminating a print official legal resource

ULC Question: What is the project scope?

◆ AALL Answer:

- ◆ Cover all state-level online legal information
 - ◆ State statutes and sessions laws
 - ◆ State administrative codes and registers
 - ◆ State high and intermediate appellate court opinions
- ◆ Consider local government information at a later time

ULC Question: What is the impact of copyright?

- ◆ AALL Answer: No conflict
 - ◆ Copyright notice can be attached to online legal document
 - ◆ No bearing on document also being official and authentic

ULC Question: Might the problem be better solved by best practices standards?

- ◆ AALL Answer:

- ◆ Principles of trustworthiness, authentication, permanent accessibility and preservation are legal in nature
- ◆ No one technological solution is the answer for every situation

Study committee established:

- ◆ September, 2008
- ◆ Members are:
 - Michele Timmons, Chair, Minnesota Revisor of Statutes Office
 - Jerry Bassett, Alabama Legislative Reference Service
 - Diane Boyer-Vine, California Office of Legislative Counsel
 - Keith Kautz, Eighth Judicial District, Wyoming
 - John Kellam, Indiana Supreme Court
 - Stephen Orlofsky, Blank Rome LLP, New Jersey
 - Ken Takayama, Hawaii Legislative Reference Bureau
 - Jack Davies, ULC Division Chair, Minnesota

Observers from 10 organizations:

- ♦ American Association of Law Libraries
- ♦ American Bar Association
- ♦ Association of Reports of Judicial Decisions
- ♦ Council of State Archivists
- ♦ Government Printing Office
- ♦ LexisNexis
- ♦ National Association of Secretaries of State
- ♦ Society of American Archivists
- ♦ Thomson-Reuters
- ♦ University of Chicago Law School

NASS observer is Jeffrey Hague from Delaware

Study committee activity:

- ◆ Held four conference calls
- ◆ Recommended to Scope and Program Committee of ULC that a drafting committee be established
(See report dated April 30, 2009)
- ◆ Prepared an outline draft of a uniform law
(See draft dated April 30, 2009)

Issue: Should scope be limited to state-level documents?

- ◆ Initial draft covers state-level documents only
- ◆ Will revisit whether local government materials with the force and effect of law should be covered

Issue: Do requirements apply in enacting state, or also other states?

- ◆ Initial draft covers enacting state only
- ◆ Will consider adding a “full faith and credit” provision for other states’ materials

Issue: which publishers should be covered?

- ◆ Initial draft covers:
 - 1) State-level official publishers, and
 - 2) Commercial publishers if designated official publisher through contract

Issue: Should law apply when internet version of document is:

- a) The only one available
(print discontinued)
- b) When electronic version is official
(even if print exists)
- c) Whenever published on web
(even if print exists)
- ◆ Initial draft covers a) and b), but provides alternate language to cover c)
- ◆ May be issues surrounding difference between “official” and “authentic”?

Issue: Should law be “uniform” or “model”?

- ◆ Strong committee consensus that law should not select any one technology
- ◆ Initial thought to describe minimum standards for authentication and preservation, in broad conceptual manner that could be uniformly adopted

Issue: What is the cost of authentication and preservation?

- ◆ Goal to describe broad standards
- ◆ Wide range of cost options would meet them
- ◆ Leave particular approach up to each state

Issue: What is really required for permanent preservation and public access?

- ◆ i.e. Will a minimum number of print copies still be required?
- ◆ Initial draft permits, but does not require, print version for archiving

Minnesota Update

- ◆ Executive Branch
 - ◆ Online state register is official
 - ◆ Authentication only by use of PDF format
- ◆ Judicial Branch
 - ◆ Judicial opinions online in PDF format now rather than MS Word format
 - ◆ Not considered official

Legislative Branch

(Office of the Revisor of Statutes)

- ◆ Print version of session laws, statutes, and administrative rules still official
- ◆ Web versions available in both HTML and PDF
- ◆ BUT, goal to achieve ability to produce official digital document

First Step: Indicator of web site authenticity

- ◆ Digital certificate from DigiCert



"s" stands for
"secure"

- ◆ https://webserver
 - ◆ Web site authentication
 - ◆ Encrypted document delivery



